Supreme Court, U.S.
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No. ____

In the Supreme Court of the United States

GERARD N. HAAS, JR.,
Petitioner,

v.

STATE OF WISCONSIN,
SUPREME COURT OF WISCONSIN,
RACINE COUNTY, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the so-called *Rooker-Feldman* doctrine bars federal jurisdiction over a Section 1983 claim alleging violations of the Thirteenth and Fourteenth Amendments and 42 U.S.C. § 1994 (peonage abolished), caused by a municipal court ordering imprisonment at hard labor in liquidation of civil forfeiture debts.

II. Whether a municipal judge enjoys judicial immunity from Section 1983 injunctive relief, when ordering a citizen imprisoned at hard labor in liquidation of civil forfeiture debts.

III. Whether a civil debtor's ability to pay, or the mere fact that a municipal court ordered the payment, are exceptions to the Thirteenth Amendment's servitude prohibitions and the consequent abolition of voluntary and involuntary servitude (peonage) codified at 42 U.S.C. § 1994.

PARTIES TO THE PROCEEDINGS

Petitioner

Gerard N. Haas, Jr.

Respondents

State of Wisconsin, Supreme Court of Wisconsin Office of Judicial Education, David H. Hass, County of Racine, Racine County Sheriff's Office, William McReynolds, Jane and John Does 1-?, City of Racine, City of Racine Police Department, Richard Polzin, David Spenner, John Does X-?, City of Racine Municipal Court, Robert S. Michelson.

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The Order of the United States Court of Appeals for the Seventh Circuit is unpublished and has not been assigned a Fed.Appx number. The Order is available on Westlaw at 2004 WL 1799360 or at 2004 Copr.L.Dec. P 28,837. A copy of the Order is included in the Appendix at Appendix A at 1a-15a. The Decision and Order of the District Court for the Eastern District of Wisconsin is published at 241 F.Supp.2d 922 (E.D. Wis. 2003). A copy of the District Court Decision and Order, is included in the Appendix at Appendix B at 16a-41a. The District Court ordered entry of the final judgment on January 16, 2003, which is printed in the Appendix at 42a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit issued its Order on August 5, 2004. This Petition is for Writ of Certiorari is filed within 90 days of the Order affirming the District Court Opinion. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 1254(1) and 2106.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., Amendment XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

42 U.S.C. § 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. § 1994

The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any

debt or obligation, or otherwise, are declared null and void.

STATEMENT OF THE CASE

Between December 7, 1998 and March 5, 1999, City of Racine Municipal Judge Robert S. Michelson ("Michelson") issued multiple imprisonment orders commanding Petitioner Gerard N. Haas, Jr. ("Haas") to pay $3,110.10 in civil debts, or if he failed to pay those debts, suffer 91 days in jail "at hard labor." (App. A, 2a-3a.)[1] On February 10, 2000, Haas was arrested pursuant to those commitments and imprisoned in the Racine County Jail. (App. A, 3a.)

In March of 2000, Michelson served a "demand letter" on Haas ordering him to pay $76,080 or threatening imprisonment for 1,800 days in the Racine County Jail. (App. B, 18a.) On January 30, 2002, police officers with the City of Racine arrested Haas for failure to pay civil debts totaling $2,536.00. *See id.* Haas's brother again paid the forfeiture debts to purchase Haas's release from imprisonment at hard labor. *See id.*

The State Defendants produced training manuals and held training seminars instructing Wisconsin municipal judges to order the arrest and incarceration of persons defaulting on payment of civil forfeiture debts to a particular municipality.

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[1] Citations to the U.S. Court of Appeals for the Seventh Circuit's order, bound with this Petition for Certiorari, are denominated "App. A, 1a-15a." Citations to the final order and judgment of U.S. District Court for the Eastern District of Wisconsin, also bound with this Petition, are denominated "App. B, 16a-43a." Supreme Court Rule 14.1(i).

(R. 1, Compl. ¶¶ 5-8 and C; R. 18, State Supporting Br., pp. 3, 9.)

Haas filed his Section 1983 complaint in the U.S. District Court for the Eastern District of Wisconsin on February 22, 2002, alleging violations of civil rights secured him by the Thirteenth and Fourteenth Amendments to the United State Constitution, and 42 U.S.C. § 1994 (peonage abolished). (App. A, 2a.) The complaint sought compensatory, punitive, declaratory and injunctive relief. (R. 1, Compl.)

The District Court dismissed all claims against all defendants by written order dated January 16, 2003, and judgment was entered accordingly. (App. B.)

Haas filed a timely Notice of Appeal on February 14, 2003, (R. 59), and the Seventh Circuit Panel affirmed the district court judgment on August 5, 2004. (App. A.)

ARGUMENT FOR GRANTING WRIT

The Seventh Circuit Panel dismissed Haas's federal civil rights claim as a matter of law, thereby deciding that state courts in its jurisdiction are free to order debtors imprisoned at hard labor in liquidation of civil judgments, and that neither the Thirteenth Amendment nor 42 U.S.C. §§ 1983 or 1994 can protect them from such impermissible state action.

The Panel relied on three separate but interrelated claims in announcing a new rule of federal law: no post-judgment municipal court order imprisoning a citizen at hard labor for civil debt can be challenged in federal court. To reach that breathtaking conclusion, the Panel: misunderstood the *Rooker-Feldman* doctrine; misconstrued Section 1983 judicial

immunity rules; and misinterpreted the meaning of peonage abolished at 42 U.S.C. § 1994.

The Panel determined that the so-called *Rooker-Feldman* doctrine divests every federal district court of jurisdiction whenever a federal civil right violation "flows from" any order of a state court. (App. A, 8a.) In other words, all actions cloaked as a "court order" are immune from civil rights enforcement, in spite of the Thirteenth Amendment's servitude prohibitions and consequent abolition of voluntary and involuntary servitude codified at 42 U.S.C. § 1994 (peonage abolished). Thus, the Panel affirmed the dismissal of Haas's federal civil rights action merely because a state municipal court ordered his imprisonment at hard labor in payment of civil debt.

The Panel's decision creates a significant intra-circuit conflict in an area of law that reflects widespread confusion amongst the lower federal courts and directly contravenes the jurisprudence of this court in *Kalb*, *Pennzoil*, *Forrester*, *DeGrandy* and *Verizon*, and directly conflicts with authoritative decisions of the Third, Fifth, Sixth, Ninth and Tenth Circuits.

The Panel's *Rooker-Feldman* analysis also impermissibly imposed an exhaustion requirement on any 42 U.S.C. § 1983 claim that challenges a state court civil debt imprisonment order, even where: the claim challenges post-judgment enforcement process, not the judgment of debt itself; the alleged debtor enjoyed no right to appeal the post-judgment hard labor imprisonment order; the post-judgment payment order was not entitled to full faith and credit in the state's own courts; the peonage claim was never litigated in state court; the alleged debtor never asked for appellate review of the municipal court's underlying legal reasoning in the judgment

of debt; and such post-judgment orders incarcerating persons at hard labor in liquidation of debt are null and void under 42 U.S.C. § 1994.

The Panel separately held that Congress not only overturned prior judgments of this Court when amending 42 U.S.C. § 1983, but also overturned the definition of key words Congress deliberately borrowed from this Court. The Panel determined a municipal judge acted within his "judicial capacity" within the meaning of 42 U.S.C. § 1983 – in ordering a person imprisoned at hard labor to satisfy a civil debt – regardless of 42 U.S.C. § 1994, such that the judge and everyone else acting on his orders were immune from injunctive relief.

With no independent right to appeal that order, Haas had no federal civil rights protection or remedy; according to the Panel's holding, Haas could choose to pay or work at hard labor, exactly the "no choice at all" this Court condemned as unconstitutional in *Clyatt*, *Reynolds*, *Pollock,* and *Kozminski* – decisions thoughtfully echoed by the state supreme courts of California and South Carolina. The Panel's order conflicts with each of those holdings.

Finally, the Panel affirmed the district court's determination that state courts are exempt from 42 U.S.C. § 1994 and can order imprisonment at hard labor in liquidation of debt without violating the Thirteenth Amendment. The Panel further affirmed the logic of the district court that "forced labor" to repay a debt is permissible if the debtor has the financially wherewithal to pay the debt.

The Panel employed a novel understanding of 42 U.S.C. § 1994 to carve out an unprecedented exception to both that fundamental civil rights statute's abolition of voluntary and

involuntary servitude, and the Thirteenth Amendment's servitude prohibitions. In the process, the Panel created a conflict in an area of law with special federal significance between the federal circuit courts of appeal, a conflict with the decisions of several state supreme courts, and a conflict with a century of this Court's thoughtful jurisprudence.

The Seventh Circuit Panel decision below cannot be allowed to stand in defiance of this Court's precedents and the persuasive and authoritative holdings of numerous other federal courts of appeal and the highest courts of several states. Significantly, such an opinion invites not only continuous confusion on the significant question of federal jurisdiction over federal civil rights claims, but promises to vexatiously multiply litigation over what were once well-settled legal principles, and sets the law of the Seventh Circuit squarely against this Court's well-reasoned precedents, and the conforming federal jurisprudence and common sense practiced and observed by all other federal courts of appeal. Finally, the Panel's order invites and encourages state courts throughout its jurisdiction to order imprisonment at hard labor in liquidation of civil debt, as a constitutionally acceptable method of enforcing civil debt judgments.

I. Rooker-Feldman Argument

Rooker-Feldman does not Bar Federal Jurisdiction over a Section 1983 Suit Challenging the Hard Labor Imprisonment for Debt Orders of a State Municipal Court, as Violating Federal Rights Secured by the Thirteenth Amendment's Servitude Prohibitions and Peonage Abolished at 42 U.S.C. § 1994.

The Seventh Circuit Panel misunderstood the *Rooker-Feldman* doctrine, a fundamental misapprehension reflected in the conflicting judgments of federal courts across the country, as courts and litigants continue to conflate and confuse judicial procedures and judicial enforcement methods with "appellate review" of state court judgments.

The Panel's decision directly conflicts with the holdings of Third, Fifth, Sixth, Eighth, Ninth, and Tenth Circuit panels, as well as this Court's jurisprudence in *Pennzoil*, *Kalb*, *Forrester* and *Verizon*. *See Kiowa Indian Tribe of Oklahoma v. Hoover*, 150 F.3d 1163 (10th Cir. 1998); *Catz v. Chalker*, 142 F.3d 279 (6th Cir. 1998); *Fontana Empire Center, LLC v. City of Fontana*, 307 F.3d 987 (9th Cir. 2002); *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987) (Scalia, J. and O'Connor, J., concurring); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940); *Forrester v. White*, 484 U.S. 219, 292 (1988); *Johnson v. DeGrandy*, 512 U.S. 997 (1994); and *Verizon Maryland Inc.* v. *Public Service Commission of Maryland*, 535 U.S. 635 (2001).

The Panel misconstrued *Rooker-Feldman* as concomitant with judicial immunity and state exhaustion of remedies, thereby imposing *Rooker-Feldman* as a complete jurisdictional bar to any federal civil rights claim alleging that state action

violated rights secured by the Constitution and Laws of the United States – even the time-honored right against imprisonment for debt codified in both – if a state court municipal judge performed the act, even if that order was "null and void" under 42 U.S.C. § 1994, even if Haas's Section 1994 claim was never litigated in any prior proceeding, even if such an order was merely a post-judgment enforcement execution remedy, and even though federal law authorizes special federal jurisdiction over state peonage violations at 42 U.S.C. § 1994.

Haas's suit challenged the post-judgment enforcement method of a particular municipal court in small-town Wisconsin – incarcerating citizens at hard labor for payment of a civil debt. Panels of the Sixth, Ninth and Tenth Circuit rejected the reasoning of this panel.

All three circuits have held that post-judgment enforcement methods utilized by a state trial court can be challenged in federal court and are not jurisdictionally barred by *Rooker-Feldman*. *See Kiowa*, 150 F.3d at 1163; *Catz*, 142 F.3d at 279; and *Fontana*, 307 F.3d at 987 (relying on the exception from *Pennzoil*, 481 U.S. at 1 (Marshall, J., concurring). All three decisions from those circuits – all three in conflict with the decision of this Seventh Circuit Panel – relied on this Court's logic set down in *Pennzoil, supra.*

In *Pennzoil*, this Court refused to apply *Rooker-Feldman* even though the plaintiff filed suit in federal district court requesting that court to enjoin a state court from issuing certain post-judgment enforcement orders. Under the guidance and governance of *Pennzoil*, the Seventh Circuit Panel's decision cannot stand.

As the Tenth Circuit recognized: "[F]ive justices explicitly rejected application of the *Rooker-Feldman* doctrine to Texaco's § 1983 challenge to Texas' bond and line provisions." *Kiowa*, 150 F.3d at 1170. These post judgment state court enforcement methods, including bond and lien orders, were not immune from a federal civil rights challenge merely because state courts were the state actors who administered them:

> The Supreme Court's reasoning in *Pennzoil* indicates that if the purpose of a federal action is 'separable from and collateral to' to a state court judgment, then the claim is not inextricably intertwined merely because the action necessitates some consideration of the merits of the state court judgment. Moreover, on its facts, *Pennzoil* demonstrates that asking a federal court to enjoin post-judgment collection procedures that allegedly violate a party's federal rights is distinguishable from asking a court to review the merits of the underlying judgment.

Kiowa, 150 F.3d at 1170.

As the Tenth Circuit recognized, and the Seventh Circuit Panel ignored, "Supreme Court jurisprudence" must "compel a narrow reading of the 'inextricably intertwined' test." *Kiowa*, 150 F.3d at 1169. This comports with a correct comprehension of *Rooker-Feldman*'s place within the federal jurisdictional schema. "To derive a coherent theory of federal jurisdiction, one must consider the entire federal jurisdictional constellation." *In re Gruntz*, 202 F.3d 1074, 1079 (9th Cir. 2000).

The rule enunciated in *Kiowa* that any action which "states a separate and distinct claim challenging the post

judgment procedures ordered by the state courts" cannot be barred by *Rooker-Feldman*. *Kiowa*, 150 F.3d at 1171. This is especially true where "federal district court review" of "particular post judgment enforcement procedures" can proceed "without disturbing the underlying judgments." *Id.*

The Sixth Circuit followed the same logic. When an action challenges the procedures associated with a judgment, rather than the underlying judgment itself, then *Rooker-Feldman* cannot bar the action. *See Catz*, 142 F.3d at 294. This applies even if the federal court declares the underlying judgment void. As the court held, where the claim is directed to the "procedures used" by the state court, "permitting jurisdiction . . . does not contravene the heart of the *Rooker-Feldman* doctrine." *Id.*

The Ninth Circuit concurred, holding that "under the teachings of *Pennzoil*, *Kiowa Indian Tribe,* and *Catz*" a plaintiff's claims challenging post-judgment enforcement action by a court "are not barred" by *Rooker-Feldman* because such claims are "separable from and collateral to the merits of the state court judgment." *Fontana*, 307 F.3d at 995 (citing *Pennzoil*, 481 U.S. at 21 (Brennan, J. concurring)).

Hence, in *Fontana*, *Rooker-Feldman* did not bar federal court doors to a plaintiff's Section 1983 action challenging the post-judgment enforcement methods of California state courts, even when the suit attacked and invalidated a state judgment of foreclosure. *See id.* Similarly, in *Kiowa*, *Rooker-Feldman* did not bar a 1983 claim seeking injunctive relief against state courts and their "use of certain post-judgment remedies." *Kiowa*, 150 F.3d at 1165. *Pennzoil* itself, from which these principles abandoned by the Seventh Circuit Panel originate, permitted federal district court jurisdiction over a Section

1983 claim seeking a preliminary injunction barring a state court from enforcing any post-judgment enforcement orders. *See Pennzoil, supra.*

Similarly, a state court order violating 42 U.S.C. § 1994 is a nullity under federal law and is always "vulnerable collaterally." *Gruntz*, 202 F.3d at 1079. The Seventh Circuit Panel's decision – holding all state court orders immune from challenge under *Rooker-Feldman*, regardless of whether such orders are void under federal law – directly contradicts the Third and Ninth Circuit and contravenes the accepted logic of this Court's prior decisions. This is especially true in the peonage context, a unique area of federal law where federal law declares all acts of state peonage, with no exception for state municipal court orders, "null and void." 42 U.S.C. § 1994.

Under this Court's long and distinguished jurisprudential history – followed by multiple circuits but rejected by the Seventh Circuit Panel in this case – where federal law renders a state court action a nullity, such an action is "vulnerable collaterally" in any subsequent federal claim. *Gruntz*, 202 F.3d at 1079 (citing *Kalb*, 308 U.S. at 439; and *In re James*, 940 F.2d 46 (3d Cir. 1991) (state court orders that federal law prevents the state court from ordering are "void").

In *Kalb*, this Court invalidated a Wisconsin state court judgment, holding that: "The States cannot in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land." *Kalb*, 308 U.S. at 439. When Congress so acts, it has "withdrawn" from the state courts the "power" to act and such federal law "render judicial acts" by state courts "nullities and vulnerable collaterally." *Id.*

Any order violating federal law, such as a bankruptcy stay, is null and void, and such an order "can have no preclusive effect." *Gruntz*, 202 F.3d at 1082. Thus, "the *Rooker-Feldman* doctrine is not implicated" in any "collateral challenge" to state court orders when the state court orders a method of relief that federal law removes the power to issue. *Id.* at 1083. As the Third Circuit explained, "[b]ecause a void judgment is null and without effect, the vacating of such a judgment is merely a formality and does not intrude upon the notion of mutual respect in federal-state interests." *James*, 940 F.2d at 52. In a comparable context, the Eighth Circuit held that federal law removed the power of a state court to issue child custody determinations, and that any order in violation of that federal law would be of "dubious validity." *Silverman v. Silverman*, 338 F.3d 886, 895-896 (8th Cir. 2003).

In all three circuits, the logic remains the same – what the Constitution and Congress take away or prohibit, the state courts cannot retain. The Constitution and Laws of the United States uncontroversially removed the power of state courts to issue imprisonment orders for payment of debt, so that challenging such orders cannot implicate the jurisdiction and comity principles underpinning the legitimate application of the *Rooker-Feldman* doctrine.

The Panel's ruling further confused the availability of state relief with the jurisdictional predicates of *Rooker-Feldman*, while other federal circuits suffer no such interpretive disability. Both the Fifth and Ninth Circuits expressly hold that the availability of state relief expressly removes *Rooker-Feldman* as a jurisdictional bar to the action. *See Fontana*, 307 F.3d at 987; and *Davis v. Bayless*, 70 F.3d 367 (5th Cir. 1995).

Significantly, this Court has never applied *Rooker-Feldman* to the lower opinions of state courts, as both *Rooker* and *Feldman* applied only to the attempted appeal of the decisions of the highest state tribunal to a federal district court. One Ninth Circuit panel, in fact, has held that *Rooker-Feldman* only applied to the decisions of state courts of last resort, in conflict with another panel over this important issue. *See Resolution Trust Corporation v. Bayside Developers*, 43 F.3d 1230, 1237 (9th Cir. 1995); and *G.C. & K.B. Investments, Inc., v. Wilson*, 326 F.3d 1096 (9th Cir. 2003) (holding the opposite, but not addressing the decision by a different panel).

Borrowing from the doctrine of full faith and credit, if a state court would not give preclusive effect to the action of the court under question, then *Rooker-Feldman* cannot bar the action in federal court either. This conforms to the *Rooker-Feldman* doctrine's doctrinal bases, designed to protect the decisions of "last resort" state courts from appellate review in federal district court.

When the same action "would be allowed in the state court" of the same state whose court action is under question, then both the Fifth and the Ninth Circuit hold they have "not allowed the *Rooker-Feldman* doctrine to bar [the] action in federal court." *Bayless*, 70 F.3d at 376; *Fontana*, 307 F.3d at 993. Similarly, if a "separate claim for relief is authorized by state law," then such claims "are not barred by the *Rooker-Feldman* doctrine." *Id.* at 995.

Applying this proper understanding of *Rooker-Feldman*, the Fifth Circuit permitted a plaintiff to "attack a consent judgment" entered in state court where the state court could have entertained a claim raising the same issue. *Gauthier v. Cont'l Diving Servs., Inc.*, 831 F.2d 559, 561 (5th Cir. 1987).

Similarly, in *Fontana*, the court permitted a civil rights claim requiring overturning and invalidating a foreclosure judgment entered by a state court because the foreclosure judgment could have been challenged in state court. *See Fontana, supra.* The court permitted the action because the plaintiff sought to "challenge the post-judgment conduct that occurred after the foreclosure judgment was entered." *Id.* at 996.

Conversely, the Ninth Circuit rejected any *Rooker-Feldman* bar to a claim when the claim had *not* been litigated in state court, and this Court has also refused to apply *Rooker-Feldman* unless the same issue had been litigated previously by the same parties – analogizing *Rooker-Feldman* to res judicata. *See Johnson v. DeGrandy*, 512 U.S. 997 (1994).

Indeed, an order not normally subject to appellate procedures – like execution remedies, including orders to arrest and imprison debtors – is not the kind of order that warrants comity to a state judge or immunity from federal civil rights review. *See Forrester*, 484 U.S. at 292. Where a court is not called on to act as an appellate court, then *Rooker-Feldman* has no applicability. *See Verizon*, 535 U.S. at 635. Thus, challenging the enforcement action of the state – or any other action by a judge that does not implicate the policies behind judicial immunity – is not barred by *Rooker-Feldman*. *See id; see also Forrester, supra.*

The Sixth, Eighth and Ninth Circuit have concurred with the reasoning of this Court, and like this Court's jurisprudence, are in stark disagreement with the Seventh Circuit Panel. *See Catz*, 142 F.3d at 294; *Silverman*, 338 F.3d at 895; and *G.C. & K.B. Investments*, 326 F.3d at 1096.

The Ninth Circuit held a federal district court has jurisdiction over a civil rights claim challenging the post-judgment enforcement method of a state court – a sale of foreclosed property – because that issue had never been raised in state court: "The present action, which challenges the notice associated with the foreclosure sale and not the foreclosure judgment, has never been litigated in state court," and thus *Rooker-Feldman* could not bar the action. *Fontana*, 307 F.3d at 995.

And the Ninth Circuit recently affirmed this same standard: unless the district court must find that the logic of the underlying judgment was "wrong" – such as that Haas actually owed a debt to the city in this case, which was not at issue – then *Rooker-Feldman* does not bar the action. *See G.C. & K.B. Investments*, 326 F.3d at 1096.

Even a challenge to a state court judgment itself is permitted if the challenge is a collateral attack on the methods of obtaining or enforcing the judgment, rather than the substantive legal logic of the state court. Where a civil rights claim does "not rest on any substantive wrongness of the rulings" of state courts, but instead questions the procedures used by the court for reaching a judgment or enforcing it, then *Rooker-Feldman* "does not bar the maintenance of [the] action." *See Catz*, 142 F.3d at 294.

The Eighth Circuit agrees: unless the very issue litigated in federal court was "the same" as the issue decided by the state court, then there is "no intertwinement" for *Rooker-Feldman* to apply in the first place. *Silverman*, 338 F.3d at 895. Indeed, a federal court may entertain any "collateral attack" on a state court judgment if it is alleged that such judgment was procured through illicit means. *See Catz*, 142 F.3d at 294; *Resolute Insurance Co. v. State of North*

Carolina, 397 F.2d 586 (4th Cir. 1968); *Lewis v. East Feliciana Parish Sch. Bd.*, 820 F.2d 143 (5th Cir. 1987).

Hence, an order obtained by procedures violating due process can be collaterally attacked in federal court and invalidated. *See Catz, supra.* Any state court action violating 42 U.S.C. § 1994 is as illicit as any order obtained by mistake, fraud, deception, accident, or in violation of due process. When federal law prohibits a state court from issuing a particular kind of order, then *Rooker-Feldman* cannot bar federal jurisdiction over the claim as the state court had no authority to issue the order in the first place. *See Silverman*, 338 F.3d at 895-896 (noting that a state court order of custody in violation of federal law would be of "dubious validity" and no bar to federal court action under *Rooker-Feldman*.)

Given the special statutory basis of *Rooker-Feldman*, the Seventh Circuit Panel created further conflict by rejecting the special federal jurisdictional power over 42 U.S.C. § 1994. Where specific federal law authorized federal jurisdiction over a claim, then a federal district court may entertain collateral attacks on a state court judgment. *See Liedtke v. State Bar of Texas*, 18 F.3d 315 (5th Cir. 1994). Similarly, "the *Rooker-Feldman* doctrine does not override federal statutory grants of original jurisdiction" and no state court action can ever "trump clearly granted federal court jurisdiction to decide and review issues of congressionally adopted policy and procedure." *Silverman*, 338 F.3d at 894-895. Under such circumstances, "*Rooker-Feldman* has no application." *Id.*

The Ninth Circuit agrees: where Congress specially authorized federal jurisdiction or particularly invalidated certain state actions, then *Rooker-Feldman* cannot bar the

action. *See Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001). There, the court held a federal district court "would not be barred by the *Rooker-Feldman* doctrine from vacating" a state court order "because the [*Rooker-Feldman*] doctrine is one of congressional intent, not constitutional mandate" and "it follows that where Congress has specifically granted jurisdiction to the federal courts, the doctrine does not apply." *Id.* at 1085.

That court construed Congress' statutory jurisdictional schema to insure that direct appeals of the highest court of a state went to the Supreme Court, not federal district courts. *See id.* Misunderstanding the origins of this doctrine, this Seventh Circuit Panel immunized all state actors who violate federal civil rights as long as they do so under the cloak of a judicial "order." Correcting this confused understanding, evidenced by intra-circuit conflicts across the federal judiciary and a confusion endangering federally protected civil rights across the country, urgently necessitates acceptance of this petition.

II. Immunity Argument

No State Municipal Judge has the "Judicial Capacity" to Order Imprisonment At Hard Labor For Payment of Debt, because 42 U.S.C. § 1994 Renders all such Orders "Null and Void," Eviscerating any Claim to Judicial Immunity from Injunctive Relief.

The Seventh Circuit Panel decided that a state municipal judge's order of arrest and imprisonment at hard labor in liquidation of a debt is an act taken within his "judicial" capacity, such that he is immune from injunctive relief under 42 U.S.C. § 1983. This interpretation directly contravenes the

prior application of these laws by this Court in decisions ranging from *Forrester, supra.*, to *Hurd, infra*. Moreover, this novel interpretation of such a significant federal question strongly advises an authoritative decision from this Court.

The Seventh Circuit Panel held that certain 1996 amendments to 42 U.S.C. § 1983 overruled this Court's holding in *Pulliam v. Allen*, 466 U.S. 522, 541-543 (1984). (App. A, 14a.) The Panel applied this assumption in the most dramatic and draconian manner – holding that state municipal court "imprisonment orders" incarcerating a person at hard labor in liquidation of a debt warrant the same deferential treatment as the legal reasoning of the highest court of a state, even when such court imprisonment orders clearly contravene 42 U.S.C. § 1994. This holding cannot comport with Congressional intent nor comply with this Court's prior holdings.

Congress borrowed the "judicial capacity" language long articulated by this Court. *See* 42 U.S.C. § 1983. It refused to extend immunity for any act by a judicial officer in his "official capacity," as such acts include enforcement capacity, as well as judicial capacity. *See id*. The U.S. Supreme Court has long recognized this important distinction. *See Forrester*, 484 U.S. at 219; and *Supreme Court of Virginia v. Consumers Union of the United States*, 446 U.S. 719 (1980). As this Court made clear in overturning a prior Seventh Circuit decision, it is the nature of the act, not the name of the actor, which informs the "judicial" character of the objectionable conduct. *See Forrester*, 484 U.S. at 219. Thus, the Court refused to extend judicial immunity to a state court judge's actions whenever those actions were not within his "judicial capacity." *Id.*

Judicial immunity protects the independence of judicial legal reasoning, not the privilege of imprisoning debtors at hard labor. Judicial immunity protects those attributes unique to the "adjudicative function," proscribing appellate review as the appropriate method of challenging such errors in legal reasoning. *See id.* By contrast, judicial immunity does not protect anything outside such legal reasoning and adjudicative acts, even when a court or judge performs the act. *See id.*

As this Court held: "[I]mmunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches." *Id.* at 227. When a judge acts in an administrative, legislative or executive capacity, judicial immunity does not attach because the judge is not acting within his adjudicative, legal reasoning "judicial capacity." *Id.* Consequently, the Court decided that jury selection was not an act within a judge's "judicial capacity." *Id.* Whenever the act "might as well have been committed to" someone else and was not necessarily "adjudicative," then judicial immunity did not attach because such an act was within the judge's official capacity, but not the judge's "judicial" capacity. *Id.* After all, "acts that simply happen to have been done by judges" do not warrant immunity. *Id.* It is the "nature of the function performed, not the identity of the actor who performed it, that informed our immunity analysis." *Id.*

The Seventh Circuit Panel completely ignored this Court's authoritative guidance in *Forrester*, a ruling incorporated, not rejected, by Congress' deliberate limitation of judicial immunity under 42 U.S.C. § 1983 to only those acts taken within the judge's "judicial" capacity. The hard labor imprisonment orders at issue here could have just as easily been assigned to a court clerk like the post-judgment enforcement orders permissibly challenged in *Pennzoil*.

Moreover, no state court judge has any judicial capacity to hold a person to labor in liquidation of a debt. Federal law removes such authority from state courts under 42 U.S.C. § 1994 – just as it removed the power to issue collection orders during bankruptcy stays and just as it removed the power to issue child custody orders in violation of federal law in international custody cases – declaring all such orders "null and void." *See* 42 U.S.C. 1994; *Kalb*, 308 U.S. at 439; *Hurd v. Hodge*, 334 U.S. 24 (1948); *James*, 940 F.2d at 46; *Gruntz*, 202 F.3d at 1079; and *Silverman*, 338 F.3d at 895.

Under this Court's well-settled precedents – precedents followed by multiple federal appellate courts but rejected by the Seventh Circuit Panel in this case – where federal law renders a state court action a nullity, such an action is "vulnerable collaterally" in any subsequent federal claim. *Gruntz*, 202 F.3d at 1079 (citing *Kalb*, 308 U.S. at 439); and *James*, 940 F.2d at 46 (state court orders that federal law prevents the state court from ordering are "void").

In *Kalb*, the Court invalidated a Wisconsin state court judgment, holding that: "The States cannot in the exercise of control over local laws and practice, vest State courts with power to violate the supreme law of the land." *Kalb,* 308 U.S. at 439. When Congress so acts, then it has "withdrawn" from the state courts the "power" to act and such federal law "render[s] judicial acts" by state courts "nullities and vulnerable collaterally." *Id.*

In a similar vein, this Court has also held that the Thirteenth Amendment removed the authority of state courts to enforce racially restrictive covenants. *See Hurd*, 334 U.S. at 24. The Supreme Court of California also routinely refuses to honor "specific enforcement of contracts for personal services" because "such enforcement might constitute

impermissible involuntary servitude." *Moss v. Superior Court*, 950 P.2d 59, 70 (Cal. 1998). South Carolina's High Court noted the same defect – that the Thirteenth Amendment voided the power of the states to use imprisonment to enforce debts. *See Ex Parte Hollman*, 60 S.E. 19, 22 (S.C. 1908).

Lastly, when judges act in an enforcement capacity, as opposed to exercising legal reasoning and judgment, they are not immune from injunctive relief. Enforcement capacity is not legally equivalent to "judicial capacity" within the protective umbrella of legitimate "judicial immunity." *Supreme Court of Virginia v. Consumers Union*, 446 U.S. at 719. As observed there, "we need not decide whether judicial immunity would bar prospective relief, for we believe that the Virginia Court and its chief justice properly were held liable in their enforcement capacities." *Id.* at 736. The post-judgment order in this case was clearly the same sort of enforcement conduct that was not within the "adjudicative" function of the state municipal court, such that immunity could not legitimately attach.

III. Peonage Argument

Neither a Debtor's Solvency nor the Mere Fact that a State Municipal Judge Ordered Imprisonment at Hard Labor for Civil Debt, Provide Exceptions to the Thirteenth Amendment's Servitude Prohibitions or Congressional Abolition of Peonage at 42 U.S.C. § 1994.

The Seventh Circuit Panel also upheld the district court's unprecedented exceptions to the Thirteenth Amendment's servitude prohibitions and voluntary and involuntary servitude abolished at 42 U.S.C. § 1994, affirming the district court's breathtaking imprimatur bestowed upon all state judicial

actors that imprison debtors at hard labor. (App. A, 14a.) First, the district court held, and the Seventh Circuit Panel affirmed, that the peonage laws and the Thirteenth Amendment do not cover state court orders. (App. A, 15a; App. B, 39a-40a.)

Second, the district court held, and the Panel affirmed, that state court judges are free to order "forced labor" against any debtor who has the financial wherewithal to pay the debt. *Id.* This fundamentally unsound interpretation directly contravenes nearly a century of this Court's precedents, and creates dangerous conflicts with the highest courts of several states. Again, the breathtaking implications of this unprecedented holding require authoritative guidance from this Court.

The peonage laws afford any plaintiff "both a shield and a sword against forced labor because of debt." *Pollock v. Williams*, 322 U.S. 4, 8 (1944). The Seventh Circuit Panel held that 42 U.S.C. § 1994 is no shield against forced labor because of debt if a state court enters the hard labor imprisonment order, a holding that directly contradicts the clear language of *Pollock*, where this Court opined:

> Whatever of social value there may be, and of course it is great, in enforcing contracts and collection of debts, Congress has put it beyond debate that no indebtedness warrants a suspension of the right to be free from compulsory service. This congressional policy means that no state can make the quitting of work any component of a crime, or make criminal sanctions available for holding unwilling persons to labor. The federal statutory test is a practical inquiry

> into the utilization of an act as well as its mere form and terms.

Id. at 24.

And previous to *Pollock*, this Court held that court sureties could be "subject to prosecution" under the peonage laws for keeping citizens "at labor" through "constant fear of imprisonment" under a court-managed surety contract system, despite the surety system arising from state court criminal convictions and orders. *United States v. Reynolds*, 235 U.S. 133, 146 (1914). Both the district court and Panel decision make light of these important principles, implicitly suggesting that the *Reynolds* decision relied on the poverty of the forced laborers in question. Nothing, however, could be further from the clear import of the Court's peonage/servitude precedents.

As this Court clarified in *Clyatt*, the peonage laws passed by Congress to enforce the Thirteenth Amendment's servitude prohibitions, "denounce[] a status or condition, ***irrespective of the manner or authority by which it is created.***" *Clyatt v. United States*, 197 U.S. 207, 216 (1905) (emphases added). That important rule of law could not be stated more clearly, and it admits no exception for municipal court imprisonment for debt orders. *See id.* To hold otherwise would provide federal judicial sanction, at the highest level, for state court-ordered judicial slavery.

As recently as 1988, this Court defined peonage as a "condition in which the victim is coerced by threat of legal sanction to work off a debt." *United States v. Kozminski*, 487 U.S. 931, 943 (1988). The exceptions noted by *Kozminski* involved "exceptional" cases which were "well established in the common law at the time of the Thirteenth Amendment"

such as parental guardian rights over their children, jury service, military service, or roadwork. *Id.* at 944.

State municipal court hard labor imprisonment orders to enforce civil debt judgments obviously fall well outside of any of these recognized exceptions. Similarly, the Court affirmed that the court-run criminal surety system invalidated in *Reynolds* could not fit under any recognized exception. *Id.* at 943. And cognizant of special Congressional concern over Thirteenth Amendment servitude prohibitions, the Court has also carefully construed bankruptcy law to avoid unconstitutional servitude entanglements, because a debtor "compelled to toil for the benefit of creditors" would be a "violation of the Thirteenth Amendment's involuntary servitude prohibition." *Toibb v. Radloff*, 501 U.S. 166 (1991).

In contrast to all of this unambiguous federal authority, the Seventh Circuit Panel affirmed the district court's logic that the ability to pay a debt made incarceration at hard labor for repayment of a debt "voluntary," and therefore outside the scope of Section 1994's explicit prohibition against the prohibition on peonage and involuntary servitude. (App. B, 39a.) The plain, explicit, and unambiguous language of the controlling peonage statute contradicts this attempt to posit a difference without distinction:

> The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of the United States; and all acts, laws, resolutions, orders, regulations, or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish, maintain, or enforce, directly or

> indirectly, **the *voluntary or involuntary* service or labor** of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

42 U.S.C. § 1994 (emphases added).

Congress could not have put the matter more clearly: Section 1994 abolishes involuntary *and* voluntary servitude, and even it could be said that Haas's servitude was voluntary, the hard labor imprisonment orders he suffered under clearly violated rights secured by the Constitution and Laws of the United States.

Whenever the state threatens, through legal process, to force labor from someone in payment of a debt, that is peonage, regardless of the voluntary origins of the debt or ability to pay the debt to escape the punishment. As this Court made quite clear nearly a century ago:

> What is peonage? It may be defined as a status or condition of compulsory service, based upon the indebtedness of the peon to the master. **The basal fact is indebtedness * * *** peonage, however created, is compulsory service, - involuntary servitude. **The peon can release himself therefrom, it is true, by the payment of the debt, but otherwise the service is enforced.** A clear distinction exists between peonage and the voluntary performance of labor or rendering of services in payment of a debt. In the latter case the debtor, though contracting to pay his indebtedness by labor or service, and subject, like any other contractor, to an action for damages for breach of that contract, can elect at any time to break it, and

> **no law or force compels performance or a continuance of the service.**

Clyatt, 197 U.S. at 216 (emphasis added).

The California Supreme Court has concurred, defining peonage as "coercing a person under threat of legal sanction to work off a debt," *Moss*, 950 P.2d at 70, and the Supreme Court of South Carolina also agrees: a state cannot provide for "imprisonment" for a "solvent litigant who unsuccessfully defends a suit" because such action "cannot be constitutional." *Hollman*, 60 S.E. at 22. Going further, and poignantly, that court opined: "Imprisonment for debt under civil process" offends the Thirteenth Amendment, which insures each American "the right to be exempt from imprisonment for debt." *Id.* No "guise" can masquerade this act to condone it constitutionally. *Id.*

The constitutional "key" is not some "ability to pay"; peonage is still peonage even when the peon "can release himself" through payment of the debt. *Clyatt,* 197 U.S. at 216. Federal law explicitly takes away a particular state remedy for debt repayment; namely, the threat of imprisonment and the much-hated and justifiably maligned halls of debtor's prisons, surety systems, and of course, the lingering stain on America's history left by chattel slavery. Ability to repay the debt is constitutionally inconsequential; the key is the threat of imprisonment if not paid. *See id.*

CONCLUSION

And there it stands – the "right to be exempt from imprisonment for debt" knows no exception for those who are "solvent" – it is the fundamental right of each and every American against this unconstitutionally coercive state power.

Once closed by the courageous and morally sound decisions of post-Civil War federal policymakers, debtors' prisons are now open for business in the rural outposts of Wisconsin, a threat to free liberty and free labor everywhere. And now every community in states within the Seventh Circuit's jurisdiction enjoy federal carte blanche to implement the same in their respective home towns – at least absent intervention by the federal High Court.

Few public policies speak more centrally to American freedom than the freedom from forced labor to satisfy civil debts, and if the Panel's decision goes unchallenged, state municipal judges are immune from suit for peonage violations in federal civil rights actions. To the contrary, judicial immunity properly protects the independence of judicial legal reasoning, not the "privilege" of imprisoning debtors at hard labor.

Federal courts decisions evince multiplying confusion on the proper scope of federal jurisdiction over civil rights claims when the violating state actor wears a judge's robe, requiring review and guidance from this Court. American citizens rightfully expect that the law will be equally and fairly applied, especially regarding federal protection of federally guaranteed civil rights in these unique areas of federal constitutional and statutory law. A grant of certiorari will insure uniformity of decision amongst the federal courts of appeal, and curtail these violative state practices.

The Petition for Writ of Certiorari should be granted forthwith in furtherance of these goals.

Respectfully submitted on this the 3rd day of November, A.D. 2004.

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 03-1450

[Filed August 5, 2004]

GERARD N. HAAS, JR.,
Plaintiff-Appellant,

v.

STATE OF WISCONSIN,
SUPREME COURT OF WISCONSIN,
RACINE COUNTY, et al.,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Wisconsin
No. 02 C 198
Lynn Adelman, Judge

Before Hon. KENNETH F. RIPPLE, Circuit Judge, Hon. DANIEL A. MANION, Circuit Judge, Hon. DIANE P. WOOD, Circuit Judge.

ORDER

On February 22, 2002, Gerard N. Haas, Jr. filed an action under 42 U.S.C. § 1983 against various Wisconsin governmental entities and individuals associated with those entities. The district court held that it was without subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine, that the defendants were entitled to immunity and that Mr. Haas could not state a claim on the merits. Mr. Haas timely appealed. For the reasons set forth in the following order, we affirm the judgment of the district court.

I

BACKGROUND

On May 12, 1998, Mr. Haas was stopped by Racine police officers. Later that day, he went to discuss the encounter with Racine Police Chief Richard Polzin and Detective Ray Knapp. During that meeting, Mr. Haas was informed that he would be held under the authority of three municipal commitments. He was not released until his brother posted $603.90 for the previously imposed unpaid forfeitures that gave rise to the commitments.

Mr. Haas was served with at least seven other municipal citations between August 5, 1997, and September 26, 1998. He did nothing in response to the citations; he did not appear in municipal court nor tender any deposits. Accordingly, Racine Municipal Judge Robert Michelson entered default judgments against Mr. Haas and imposed forfeiture debt judgments. Subsequently, Judge Michelson issued "warrants" or "commitments" that stated: "Contempt of Court--Commitment Upon Sentence." These commitments ordered Mr. Haas to pay $3,110.10 or spend ninety-one days in jail

"at hard labor." On February 10, 2000, Mr. Haas was taken to the Racine County Jail under the authority of the previously described commitments by Racine police officers.

We know from *State ex rel. Haas v. McReynolds,* 2002 WI 43, 252 Wis. 2d 133, 643 N.W.2d 771 (Wis. 2002), that, on February 11, 2000 (the day after he was arrested), Mr. Haas filed a writ of habeas corpus in the Racine County Circuit Court; he claimed that the municipal court lacked subject matter jurisdiction. *Id.* at 773. The notion that the municipal court lacked jurisdiction over Mr. Haas also underlies one of his two key contentions in this court: that the municipal court could not take jurisdiction over Mr. Haas on the basis of a citation alone, despite the fact that Wisconsin law appears to contemplate that very process. *See* Wis. Stat. §§ 800.01(1), 800.01(2), 800.01(3), 800.04(2m). On June 29, 2000, the Racine County Circuit Court held: "(1) there was legal cause for Haas's imprisonment; (2) the Racine Municipal Court acted within its jurisdiction; (3) Haas's due process rights were not violated; (4) there was no reasonable basis for Haas's habeas corpus petition; and (5) the petition was frivolous." *McReynolds,* 643 N.W.2d at 774. Mr. Haas originally decided to appeal the denial of his first petition; then the voluntarily dismissed his appeal.

Mr. Haas then filed a second habeas petition, which Wisconsin's appellate court dismissed on February 12, 2001. *Id.* He petitioned the Wisconsin Supreme Court for review, and, on September 21, 2001, the Wisconsin Supreme Court granted his petition and agreed to hear his claim.

While review was pending before the Supreme Court of Wisconsin, in January 30, 2002, Mr. Haas again was stopped while driving his car. He was taken into custody under the authority of two municipal commitments for failure to pay

forfeiture debts totaling $2,536. He was confined in the Racine County Jail but released after his brother posted a bond for the forfeitures owed.

About a month later, on February 22, 2002, Mr. Haas filed an action under 42 U.S.C. § 1983 against various city, county and state defendants.[1] His complaint sought compensatory and punitive damages and injunctive and declaratory relief. Mr. Haas alleged that the defendants had violated a number of his federal constitutional rights; he also asserted a number of state law claims. Only two of his claims are relevant to this appeal.[2] First, he claimed that the municipal court operated without "jurisdiction" over him because, as a matter of Wisconsin law, issuance of a citation does not commence an action, and the municipal court operated on the basis of a citation alone. By proceeding on this basis, Mr. Haas claims, the municipal court "violated his fundamental 14th Amendment right not to be deprived of liberty or property without due process of law." Appellant's

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[1] In brief, the "city defendants" are Municipal Judge Robert Michelson, and the city entities and employees that executed Judge Michelson's orders by, for example, putting him under arrest. The "county defendants" are the entities and individuals responsible for detaining Mr. Haas after he was arrested. The "state defendants" are the State of Wisconsin, the Supreme Court of Wisconsin Office of Judicial Education and individuals involved in that office. *See* R.I at 2-4.

[2] Because Mr. Haas has not addressed any of his other claims in his opening brief, they are waived. *See Hentosh v. Herman M. Finch Univ. of Health Scis./The Chicago Med. Sch.*, 167 F.3d 1170, 1173 (7th Cir. 1999).

Br. at 6.[3] Second, Mr. Haas claimed that the municipal court's decision to order him imprisoned "at hard labor" for failure to pay his debts "violated the 13th Amendment's prohibition against involuntary servitude[,] peonage abolished by 42 U.S.C. § 1994," and Article I, Section 16 of the Wisconsin Constitution. *Id.* at 9.

Meanwhile, on April 30, 2002, the Wisconsin Supreme Court affirmed the dismissal of Mr. Haas' second habeas petition. It held that, "because Haas could have sought (and in fact started to seek) a direct appeal of the first habeas corpus petition to address the same issues he now raises, he was not entitled to a separate writ." *McReynolds,* 643 N.W.2d at 774. It noted that, given this holding, it did not have to address "whether the municipal court had jurisdiction to issue the commitments." *Id.*

In the federal proceeding on November 20, 2002, the district court dismissed the claims against Wisconsin and the Office of Judicial Education, as well as claims against the state officials in their official capacities for damages, based on Eleventh Amendment immunity. *See* R.50. In addition, Mr. Haas withdrew many of his federal constitutional claims. *Id.* On January 16, 2003, the district court dismissed Mr. Haas' remaining claims and entered judgment against Mr. Haas. Specifically, the district court held: (1) that the *Rooker-Feldman* doctrine applied and rendered it without subject

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[3] At least as expressed in his briefs, Mr. Haas' Fourteenth Amendment argument is that *Wisconsin law* required more than a mere citation to obtain "jurisdiction" (and operating without jurisdiction violated his due process rights); it is not that the Due Process Clause *itself* requires more than a mere citation. Any argument as to the latter is waived, *see Hentosh,* 167 F.3d at 1173, and, even if it were alive, it would not change our holding.

matter jurisdiction, (2) that the defendants were entitled to immunity and (3) that Mr. Haas failed to state a claim. Mr. Haas timely appealed.

II

DISCUSSION

A.

The district court held that it was without subject matter jurisdiction to hear Mr. Haas' collateral attack under the *Rooker-Feldman* doctrine. We review this decision de novo. *See Brokaw v. Weaver,* 305 F.3d 660, 664 (7th Cir. 2002). "Simply put, the *Rooker-Feldman* doctrine 'precludes lower federal court jurisdiction over claims seeking review of state court judgments ... [because] no matter how erroneous or unconstitutional the state court judgment may be, the Supreme Court of the United States is the only federal court that could have jurisdiction to review a state court judgment.' Thus, if a claim is barred by the *Rooker-Feldman* doctrine, a federal court lacks subject matter jurisdiction over the case." *Id.* (internal citations and footnote omitted). The *Rooker-Feldman* doctrine bars federal court review not only of a state court's "judgment" but also of claims that are "inextricably intertwined" with the state court judgment. *See id.* at 664-65. "If the *injury* alleged resulted from the state court judgment itself," *Rooker-Feldman* bars review. *Long v. Shorebank Dev. Corp.,* 182 F.3d 548, 555 (7th Cir. 1999) (internal quotation marks and citation omitted) (emphasis added). In this case, because Mr. Haas' alleged injuries result directly from the state court judgments themselves, we are without jurisdiction. *See also Gash Assocs. v. Rosemont,* 995 F.2d 726, 729 (7th Cir. 1993) ("Just as in *Ritter [v. Ross,* 992 F.2d 750 (7th Cir. 1993)], [the plaintiff] has no claim independent of the state

court's adverse decision. To put this differently, the injury of which GASH complains was caused *by* the judgment, just as in *Rooker, Feldman,* and *Ritter.*").

As the district court noted, this case is indistinguishable from *Homola v. McNamara,* 59 F.3d 647 (7th Cir. 1995). In *Homola,* the City of Edwardsville sought an injunction against Homola's building under an expired permit. Homola ignored the suit, and the state court entered a default judgment against him, directing him to apply for a new permit and to allow the City to do inspections. Homola refused; the state court therefore ordered him to be held in contempt of court and arrested. Accordingly, county authorities incarcerated him. After a night of thinking his situation over, he decided to comply with the default judgment. *Id.* at 648-49.

Undeterred, Homola then went to federal court, and, proceeding under § 1983, he brought an action against the City, its attorney, the state court judge and the individuals charged with executing the state court's order. Dismissing the action under the *Rooker-Feldman* doctrine, the court stated: "Homola has tried to shift not only courts but also jurisdictions, asking a federal judge to award relief for wrongs committed in state court. Instead of saying that there was no constitutional flaw in the state proceedings, the district court should have refused to entertain the claims, sending Homola back where he belongs--the original courts." *Id.* at 650. The court also noted that the case did not present an instance in which *Rooker-Feldman* was inapplicable because the federal plaintiff, Homola, did not have an opportunity to raise his claims in state court: "The order to hale Homola into court in the contempt proceedings, by contrast, was issued after an opportunity to be heard. Homola spurned that opportunity--that is why he had to be dragged into court--but

one who turns his back on the original tribunal does not help himself to the opportunity to litigate elsewhere." *Id.* at 651.

Mr. Haas is similarly situated; like Homola, all of his alleged *injuries* flow from the state court judgment. Through the guise of § 1983, he, in essence, asks us to "set aside" the default judgments (because the municipal court lacked jurisdiction, thus violating due process) and the subsequent imprisonment orders (because they violated the federal prohibition against involuntary servitude, constituted peonage and violated the Wisconsin Constitution) in order to remedy his injuries flowing therefrom. *See GASH Assocs.*, 995 F.2d at 728. Also, like Homola, Mr. Haas "spurned" his opportunities to be heard on these very matters in state court. Instead of completely ignoring the municipal court and its proceedings, Mr. Haas could have raised his claims there. *See* Wis. Stat. §§ 800.02(1), 800.04, 800.095, 800.115(2); *see also City of Milwaukee v. Wroten,* 160 Wis. 2d 207, 466 N.W.2d 861, 867 (Wis. 1991) ("We hold that the municipal court has the authority to determine the constitutionality of an ordinance that is the basis of an action brought before it."); *City of Kenosha v. Jensen,* 184 Wis. 2d 91, 516 N.W.2d 4, 7 (Wis. Ct. App. 1994) ("We conclude that a municipal court has the inherent authority to vacate a void judgment irrespective of statutory requirements for reopening judgments."). If his claims were rebuffed, he then could have appealed to the circuit court. *See* Wis. Stat. § 800.14. Indeed, we know that Mr. Haas did raise the issue of the municipal court's "jurisdiction" in state court on his first habeas petition; he offers no reason why he could not have raised his second argument--that the commitments were unconstitutional--there as well. Despite the fact that the state courts can and must apply the federal law that he asks this court to apply to trump his state judgments, *see* U.S. Const. art. VI, § 2 (Supremacy Clause), he has foregone the state

court processes and come to us for collateral review. The whole point of *Rooker-Feldman* is to preclude our taking on that role.

Despite the district court's reliance upon *Homola,* Mr. Haas' briefs do not mention the case. Nor does he invite our attention to a case that is as nearly on point. Rather, he attempts to limit the applicability of *Rooker-Feldman* by suggesting that the relevant state court "judgment" for purposes of *Rooker-Feldman* analysis is the state court's underlying decision with respect to his "guilt or innocence regarding ordinance violations."[4] Appellant's Br. at 34. First, we point out, any attempt by Mr. Haas to relitigate the underlying issue of liability, although not barred by *Rooker-Feldman,* would be barred, in any event, by collateral estoppel.[5] More fundamentally, Mr. Haas' approach of

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[4] Mr. Haas does not dispute his guilt.

[5] As we have explained:

> *Homola v. McNamara,* 59 F.3d 647, 650 (7th Cir. 1995), ... points out that the *Rooker-Feldman* doctrine, if it is to be kept distinct from res judicata (we remarked on the ease of confusing *Rooker-Feldman* with res judicata in *GASH Associates v. Village of Rosemont,* 995 F.2d 726, 728 (7th Cir. 1993)), ought to be confined to cases in which the defendant in the state court is seeking to undo a remedial order of some sort (ordinarily a criminal conviction or an injunction). That is unmistakably a collateral attack on the state court's judgment. When a plaintiff seeks to relitigate a suit that has been decided against him, he is not so much attacking as trying to bypass the judgment in that suit; and the doctrine that blocks him is res judicata. It blocks Nesses, who had previously sued the lawyers twice (but of course once would have been enough for res judicata to

challenging the initial decision to exercise jurisdiction over Mr. Haas and the subsequent remedial order, as opposed to Mr. Haas' guilt or innocence, does not change the fact that, at bottom, Mr. Haas' civil rights claims seek invalidation of the municipal court action. If these book-end decisions are not relevant "judgment[s]" for purposes of *Rooker-Feldman,* they are at least "inextricably intertwined" with the "judgment" so that *Rooker-Feldman* is fully operative.

Mr. Haas' main contention to the contrary is that federal courts *always* have the ability to review state court judgments for jurisdictional competence, and *Rooker-Feldman* can be no exception.[6] However, controlling authority does not support his claim. In *Schmitt v. Schmitt,* 324 F.3d 484 (7th Cir. 2003), this court held:

> Mr. Schmitt also argues that a rarely invoked "void *ab initio*" exception to the *Rooker-Feldman* doctrine applies here. According to Mr. Schmitt, the faulty service of process meant that the state courts never had jurisdiction over him. Federal courts exercising bankruptcy jurisdiction have occasionally reviewed state court judgments where the state court lacked personal or subject matter jurisdiction. *See, e.g., In re James,* 940 F.2d 46, 52 (3d Cir. 1991). *But see In re Ferren,* 203 F.3d 559, 560 (8th Cir. 2000) (declining to create exception). We have acknowledged the Third

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operate as a defense) for the same wrongdoing, and lost.

Nesses v. Shepard, 68 F.3d 1003, 1004 (7th Cir. 1995).

[6] His argument that the municipal court was jurisdictionally incompetent is, of course, that the citation was insufficient as a matter of state law to bring him before the municipal court.

Circuit's exception, but we have not endorsed it. *4901 Corp. v. Town of Cicero,* 220 F.3d 522, 528 n.6 (7th Cir. 2000).

> While a void *ab initio Rooker-Feldman* exception might be appropriate in some bankruptcy cases (apparently the only situation in which it has been applied) in order to protect the dominant federal role in that specialized area of the law, it has no place here. As we have said, the Illinois state courts were competent to determine their own jurisdictional boundaries, so there is no need for the federal courts to intervene. If a state court had violated constitutional jurisdictional limits, Mr. Schmitt could have brought that up with the Supreme Court after exhausting his state court remedies.
>
> In sum, Mr. Schmitt has brought the precise sort of claim *Rooker-Feldman* eliminates ...

Id. at 487.

Even assuming that *Schmitt* were not directly and precisely on point, which it is, Mr. Haas' argument, as he frames it, still would fail. He argues that "collateral attack of state court judgments or orders is *always* permitted when the collateral attack challenges the *subject matter jurisdiction* of the state court that issued the judgment or order." Appellant's Br. at 35 (emphasis added). Yet, Mr. Haas' challenge to the sufficiency of citations to bring him before the municipal court has absolutely nothing to do with *subject matter jurisdiction*. "Subject-matter jurisdiction defines the court's authority to hear a given *type* of case." *United States v. Morton,* 467 U.S. 822, 828, 104 S. Ct. 2769, 81 L. Ed. 2d 680 (1984) (emphasis added). A municipal court can hear

cases regarding violations of municipal ordinances; Mr. Haas' argument, if it has any colorable jurisdictional basis, goes to the municipal court's personal jurisdiction. *See* Wis. Stat. § 800.01(1)(a) (providing that, "in municipal court, personal jurisdiction in municipal ordinance violation cases" is obtained when, inter alia, the defendant "is served with a summons and complaint *or citation*" (emphasis added)).[7] Mr. Haas is attempting to bypass the state review processes and is

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[7] Mr. Haas also argues that "Haas's request for declaratory and injunctive relief precludes application of *Rooker-Feldman,*" Appellant's Br. at 34, but, in this circuit, *Rooker-Feldman* applies equally to claims for monetary damages and prospective relief. *See Garry v. Geils,* 82 F.3d 1362, 1370 (7th Cir. 1996); *Homola,* 59 F.3d at 651; *see also Keene Corp. v. Cass,* 908 F.2d 293, 297 (8th Cir. 1990) (*Rooker-Feldman* doctrine applies to claims for injunctive and declaratory relief); *Blue Cross & Blue Shield of Maryland, Inc. v. Weiner,* 868 F.2d 1550, 1556 (11th Cir. 1989) ("*Rooker-Feldman* bar applies to BCBS-Maryland's request for injunctive relief in addition to its request for declaratory relief."). He also appears to argue that some of the defendants' actions--specifically, the State of Wisconsin and its Office of Judicial Education that promulgated the Municipal Judge Benchbook (which incorporates the allegedly unlawful practices)--were too remote from the state court judgment to thwart review under *Rooker-Feldman. See* Appellant's Br. at 34-35. However, the district court dismissed the claims against these defendants. *See* R.50 ("Claims against State of Wisconsin and Office of Judicial education dismissed."); R.51 at 2. Regardless, *all* of the injuries to *Mr. Haas* (of course, Mr. Haas cannot assert relief for the injuries of others) by *all defendants* ultimately stem from the state judgment. *See GASH Assocs. v. Vill. of Rosemont,* 995 F.2d 726, 729 (7th Cir. 1993) ("Just as in *Ritter,* [the plaintiff] has no claim independent of the state court's adverse decision. To put this differently, the injury of which GASH complains was caused *by* the judgment, just as in *Rooker, Feldman,* and *Ritter.*").

asking the federal courts to review collaterally, to set aside and to remedy injuries flowing from a state court judgment. The district court correctly held that the *Rooker-Feldman* doctrine forbids it to undertake these tasks. *See GASH Assocs.*, 995 F.2d at 728.

B.

What we have said so far requires affirmance of the district court's decision. We note, however, that the defendants also are entitled to immunity. Judges, such as Judge Michelson, are absolutely immune from suits for damages unless (1) the suit challenges an action that is not judicial in nature or (2) where the judge acted "in the complete absence of all jurisdiction." *Mireles v. Waco,* 502 U.S. 9, 12, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991). Mr. Haas vigorously asserts the latter exception, but that exception is only concerned with *subject matter jurisdiction, see, e.g., Homola,* 59 F.3d at 651, and even then, only when it is blatantly absent, *see, e.g., Tobin for Governor v. Illinois State Bd. of Elections,* 268 F.3d 517, 524 (7th Cir. 2001) ("Judicial officers are entitled to that immunity even when they act in error, maliciously, or in excess of their authority."). As we noted earlier, Mr. Haas' challenge to the municipal court's jurisdiction--that no action commenced under Wisconsin law because Wisconsin law requires more than a citation--has nothing to do with subject matter jurisdiction. In addition, his reading of the Wisconsin statutes to support his "jurisdictional" argument is tortured; at best, Judge Michelson's failure to accept Mr. Haas' position (even assuming it had some relevance to subject matter jurisdiction) was a minor procedural error. *See Homola,* 59 F.3d at 651 ("The judge must be acting as a judge, rather than as an ombudsman or administrative official. Judge Stack had subject-matter jurisdiction and played a judicial role. That is

sufficient for immunity." (internal citation omitted)). Additionally, the only injury that Mr. Haas has alleged the city defendants and county defendants inflicted on him was as a result of compliance with Judge Michelson's orders. Accordingly, these officers are entitled to quasi-judicial immunity; lest, as here, they are to become a "lightning rod for harassing litigation aimed at the court." *Richman v. Sheahan,* 270 F.3d 430, 435 (7th Cir. 2001) (internal quotation and citation omitted). This form of immunity assuredly disposes of Mr. Haas' damages claims against all of these defendants. *See Homola,* 59 F.3d at 651.

Mr. Haas' claims for injunctive relief against Judge Michelson are also foreclosed. In 1996, Congress amended 42 U.S.C. § 1983 to state that "injunctive relief shall not be granted" in an action brought against "a judicial officer for an act or omission taken in such officer's judicial capacity ... unless a declaratory decree was violated or declaratory relief was unavailable." This amendment was intended to overrule the Supreme Court's decision in *Pulliam v. Allen,* 466 U.S. 522, 541-43, 104 S. Ct. 1970, 80 L. Ed. 2d 565 (1984) (holding that judicial immunity is not a bar to demands for injunctive relief against state judges). *See Bolin v. Story,* 225 F.3d 1234, 1242 (11th Cir. 2000) (per curiam) (discussing the amendment's purpose and explaining its effect).[8]

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[8] Nevertheless, Mr. Haas' opening brief cites and quotes *Pulliam* for the proposition that "judicial immunity does not bar claims for injunctive relief against state judges acting in their official capacities," Appellant's Br. at 29, without noting the 1996 amendments to 42 U.S.C. § 1983's language that overruled the case or explaining why the new language in § 1983 would not apply to his situation. In his reply brief, he claims that these "amendments carefully preserved injunctive relief against state court judges when 'such action was clearly in excess of such officer's jurisdiction.'"

Section 1983 still leaves room for claims for declaratory relief, which Mr. Haas has requested. However, as noted above, the *Rooker-Feldman* doctrine reaches all forms of relief Mr. Haas requests and disposes of his case.

C.

Finally, as an independent basis of affirmance, we note our agreement with the district court's analysis of the merits of the case. At bottom, Mr. Haas has presented no colorable constitutional issue.

Conclusion

For the foregoing reasons, the judgment of the district court is affirmed.

AFFIRMED

Reply Br. at 13 (quoting *Kampfer v. Scullin*, 989 F. Supp. 194, 201 (N.D.N.Y. 1997) (listing and explaining the amendments)). However, the "excess of such officer's jurisdiction" language is not in § 1983; it is now found in 42 U.S.C. § 1988, which involves attorney's fees.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

CASE NUMBER: 02-C-0198

[Filed January 16, 2003]

GERARD N. HAAS, JR.,
Plaintiff,

v.

STATE OF WISCONSIN, WISCONSIN SUPREME COURT-Office of Judicial Education, DAVID H. HAAS, RACINE COUNTY, RACINE COUNTY SHERIFF'S DEPARTMENT, WILLIAM L. MC REYNOLDS, JOHN DOES-Unknown Racine County Deputy Sheriffs, CITY OF RACINE, RACINE POLICE DEPARTMENT, RICHARD POLZIEN, DAVID SPENNER, JOHN DOES-Unknown City of Racine Police Officers, CITY OF RACINE MUNICIPAL COURT, and ROBERT S. MICHELSON,
Defendants.

LYNN ADELMAN, District Judge.

DECISION AND ORDER

Plaintiff Gerard N. Haas brings this claim under 42 U.S.C. § 1983 alleging that defendants violated his federal constitutional rights including rights guaranteed by the First, Fourth, Sixth, Eighth, Ninth, Thirteenth and Fourteenth Amendments. He also brings various state law claims including abuse of process, false arrest, false imprisonment, trespass and conversion. All of plaintiff's claims stem from his allegation that he was wrongfully incarcerated for failing to comply with several municipal court judgments imposing civil forfeitures. Plaintiff names as defendants the City and County of Racine, the State of Wisconsin, and various departments and employees of these governmental entities. He seeks damages and injunctive and declaratory relief.

Based on Eleventh Amendment immunity, I previously dismissed plaintiff's claims against the State and state agencies, as well as his federal law claims for damages and all of his state law claims against state officials in their official capacity. I also dismissed plaintiff's claims against defendant Ronni G. Jones because of her recent death. In addition, plaintiff voluntarily withdrew his claims under the First, Sixth, Eighth and Ninth Amendments.

Pursuant to Fed. R. Civ. P. 12(b)(6), the remaining defendants now move to dismiss plaintiff's remaining claims.

I. FACTUAL ALLEGATIONS

On several occasions, plaintiff was cited for violating ordinances of the City of Racine. Instead of paying deposits or appearing in court, plaintiff ignored the citations. As a result, the municipal court entered default judgments against him. When he failed to comply with the judgments or attempt

to explain why he could not do so, the court ordered his incarceration.

Plaintiff complains of a number of incidents, all of which involve arrests or attempted arrests of him pursuant to the municipal court's orders. On May 12, 1998, he was detained on eight outstanding municipal warrants until his brother paid $603.90 to cover the unpaid forfeitures. On August 13, 1999, police officers went to his mother's house seeking to arrest him for non-payment of other default judgments. On February 10, 2000, plaintiff was arrested pursuant to an arrest warrant and taken to the Racine County Jail based on non-payment of approximately $3,100 in outstanding judgments. On March 24, 2000, plaintiff was served with papers stating that he had violated various municipal ordinances and failed to pay the resulting judgments and would be imprisoned for approximately five years unless he paid approximately $76,000 in forfeitures. On January 30, 2002, plaintiff was detained until his brother paid $2,536 in outstanding judgments.

Plaintiff alleges that as a result of the foregoing incidents, he suffers a "constant threat of imminent and unlawful arrest" and that he has suffered "great humiliation, embarrassment, mental suffering, loss of liberty and property, deprivation of constitutional and statutory rights, as well as loss of reputation." (R. 1 ¶ 31.)

II. SUBJECT MATTER JURISDICTION

Plaintiff asserts that I have jurisdiction over his federal claims based on 28 U.S.C. § 1331 and supplemental jurisdiction over his state law claims based on 28 U.S.C. § 1367. However, I conclude that I am deprived of jurisdiction based on the Rooker-Feldman doctrine. *See Dist.*

of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16, 44 S. Ct. 149, 68 L. Ed. 362 (1923). Although the parties have not raised this issue, I raise it *sua sponte* because federal courts are required to jealously guard their own jurisdiction. *See Lewis v. Anderson*, 308 F.3d 768, 771-72 (7th Cir. 2002). In doing so, I assume that all of plaintiff's allegations are true and construe the complaint in the light most favorable to him. *See Am. Fed'n of Gov't Employees, Local 2119 v. Cohen*, 171 F.3d 460, 465 (7th Cir. 1999) (citing Fed. R. Civ. P. 12(b)(1)).

The *Rooker-Feldman* doctrine deprives a lower federal court of jurisdiction to review a state court decision. *Lewis*, 308 F.3d at 772. The doctrine extends to claims seeking direct review of a state-court decision and claims "inextricably intertwined with the state-court [decision] such that the federal claim succeeds only to the extent that the state court wrongly decided the issue before it." *Id.* (internal citations and quotation marks omitted); *accord GASH Assocs. v. Vill. of Rosemont*, 995 F.2d 726, 727 (7th Cir. 1993) (stating that the doctrine bars federal suit by a plaintiff who "objects to the outcome of a judicial proceeding and files a separate suit to get around it"). The doctrine bars review even if I am convinced that the state court's decision was unconstitutional or otherwise contrary to law. *Rizzo v. Sheahan*, 266 F.3d 705, 713 (7th Cir. 2001); *Remer v. Burlington Area Sch. Dist.*, 205 F.3d 990, 996 (7th Cir. 2000).

In determining whether the doctrine applies, "the pivotal question ... is 'whether the injury alleged by the federal plaintiff resulted from the state court judgment itself or is distinct from that judgment.'" *Lewis*, 308 F.3d at 772 (quoting *Rizzo*, 266 F.3d at 713). In *Homola v. McNamara*,

59 F.3d 647, 649 (7th Cir. 1995), a state court entered a default judgment against the plaintiff Homola for violating a building permit ordinance and ordered that city officials conduct inspections of Homola's property. Homola refused to comply with the court's orders, and the court eventually held him in contempt and ordered his arrest. *Id.* In a series of federal court actions, Homola sued the city, the city attorney who had prosecuted him, the judge was had ordered his arrest and the city official charged with carrying out the judge's inspection order. *Id.* Homola sought damages for having been sued, arrested and jailed. *Id.* The Seventh Circuit held that federal court review of Homola's claims was barred by the *Rooker-Feldman* doctrine because his claims rested entirely on the alleged unlawfulness of the state court's orders. *Id.* at 650-51. The Seventh Circuit further stated that, had Homola sued the arresting officers, such claims would also have been barred because the alleged injuries also resulted solely from the court's order that Homola be arrested. *Id.* at 650.

The present case is indistinguishable from *Homola*. Plaintiff alleges that as a result of Municipal Court Judge Robert Michelson's orders, he was arrested, incarcerated and forced to pay forfeitures. His alleged injuries all resulted from the judge's orders. He complains of no injuries that are distinct from those resulting from the court's orders. Plaintiff alleges, for example, that the arresting officers violated his Fourth Amendment rights, but he bases this claim solely on the fact that the officers executed Judge Michelson's orders. *Cf. Nesses v. Shepard*, 68 F.3d 1003, 1005 (7th Cir. 1995).

The *Rooker-Feldman* doctrine would not bar federal review if, during the state court proceedings, plaintiff had no reasonable opportunity to raise the claims that he now raises. *Brokaw v. Weaver*, 305 F.3d 660, 668 (7th Cir. 2002). However, plaintiff could have raised the claims he raises here

in municipal court, *see* Wis. Stat. §§ 800.02(1), 800.04, 800.095, 800.115(2), or he could have appealed the municipal court judgments, *id.* § 800.14. Indeed, in at least one instance plaintiff did, in fact, raise some of his present claims in state court. *State of Wis. ex rel. Haas v. McReynolds*, 2002 WI 43, 252 Wis. 2d 133, 136-39, 142-44, 643 N.W.2d 771 (2002) (recounting history of prior proceedings and declining to reach the merits of plaintiff's claims).

Because plaintiff's suit seeks review by a federal court of the orders of a state court, the *Rooker-Feldman* doctrine deprives me of jurisdiction. However, in the event that I am mistaken on the question of subject matter jurisdiction, in the interest of judicial economy, I will also address defendants' motions to dismiss.

III. RULE 12(b)(6) MOTIONS

A. Standard

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the complaint to state a claim upon which relief may be granted. *See* Fed. R. Civ. P. 12(b)(6). Dismissal of an action under such a motion is warranted if the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1080 (7th Cir. 1997); *see Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). The essence of a Rule 12(b)(6) motion is not that the plaintiff has pleaded insufficient facts, it is that even assuming all of his facts are accurate, he has no legal claim. *Payton v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 184 F.3d 623, 627 (7th Cir. 1999). The facts alleged in the complaint are assumed to be true, and all facts, and all reasonable inferences flowing from those facts, are read in the light most

favorable to the plaintiff. *Bethlehem Steel Corp. v. Bush*, 918 F.2d 1323, 1326 (7th Cir. 1990).

B. Judicial and Quasi-Judicial Immunity

1. Defendant Michelson

Judges are absolutely immune from suits for damages, *Mireles v. Waco*, 502 U.S. 9, 10, 112 S. Ct. 286, 116 L. Ed. 2d 9 (1991), including actions raising constitutional challenges under 42 U.S.C. § 1983, *John v. Barron*, 897 F.2d 1387, 1391-92 (7th Cir. 1990). There are two exceptions: (1) where the suit challenges an action that is not judicial in nature, and (2) where the judge has acted "in the absence of all jurisdiction." *Mireles v. Waco*, 502 U.S. at 10. Plaintiff argues that his challenge falls into the latter category.

When addressing the scope of a court's jurisdiction in light of immunity, I consider only the court's subject matter jurisdiction, *Crenshaw v. Dywan*, 34 F. Supp. 2d 707, 711 (N.D. Ind. 1999) (citing *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986) (*en banc*), cited with approval in *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990)), and construe it broadly, *Stump v. Sparkman*, 435 U.S. 349, 356, 98 S. Ct. 1099, 55 L. Ed. 2d 331 (1978). Courts draw a distinction between judicial acts taken "in the absence of all jurisdiction," for which the judge is not immune from suit, and actions taken "in excess" of jurisdiction, for which the judge is immune. *Bradley v. Fisher*, 80 U.S. 335, 20 L. Ed. 646 (1871). For example,

> If a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the

> other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would merely be acting in excess of his jurisdiction and would be immune.

Briscoe v. LaHue, 663 F.2d 713, 722 n.5 (7th Cir. 1981), *aff'd*, 460 U.S. 326, 103 S. Ct. 1108, 75 L. Ed. 2d 96 (1983) (quoting *Stump*, 435 U.S. at 357 n.7) (internal quotation marks omitted); *accord Duty v. City of Springdale*, 42 F.3d 460, 462 (8th Cir. 1994) (per curiam) ("[A] judge acts in excess of jurisdiction if the act complained of is within his general power of jurisdiction but is not authorized because of certain circumstances[; whereas, there] is a clear absence of jurisdiction when a court of limited jurisdiction attempts to adjudicate a case outside of its jurisdiction ....") (internal citation and quotation marks omitted). Errors, even grave ones, and even when made with malicious intent, do not deprive a judge of absolute immunity. *John*, 897 F.2d at 1391 (citing *Stump*, 435 U.S. at 356-57).

Here, plaintiff was cited for violating municipal ordinances. Judge Michelson entered judgments, issued warrants and summonses, and ordered plaintiff's arrest in connection with such violations. In Wisconsin, municipal court judges have jurisdiction over municipal ordinance violations. Wis. Const. art. VII, § 14; Wis. Stat. § 755.045(1). State law empowers them to enter default judgments, Wis. Stat. § 800.04(2m), issue warrants and summonses, *id.* § 800.095(1) and, in some cases, order incarceration for failure to comply, *id.* § 800.095(b)1. Thus, Judge Michelson's actions were not taken in the clear absence of jurisdiction. *See Duty*, 42 F.3d at 463 (holding that municipal court judge did not act in clear absence of jurisdiction when he ordered plaintiff's arrest for failing to pay fines for violation of municipal ordinances because state

law authorized municipal court judges to issue arrest warrants in connection with municipal ordinance violations). Even if Judge Michelson acted unlawfully, his actions were, at most, in excess of his jurisdiction.[1] Thus, he is immune from suit for damages.

2. Law Enforcement Officer Defendants

Law enforcement officers who carry out a judge's order are immune from suits that challenge nothing more than the fact that the order was executed. *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238-39 (7th Cir. 1986) (granting quasi-judicial immunity to law enforcement officers enforcing foreclosure judgment). If, however, the plaintiff challenges officer conduct that is not authorized by the judge's order, the officers are not immune. *Richman v. Sheahan*, 270 F.3d 430, 436-37 (7th Cir. 2001) (holding that officers were not entitled to quasi-judicial immunity in action alleging that they used excessive force in carrying out judge's order).

As discussed in the previous section, plaintiff here complains only that the officers and deputies executed the court orders, not that they did anything improper independent of the execution of the orders. Thus, the police officer and sheriff's deputy defendants are immune from suit for damages.

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[1] In addition, plaintiff's arguments about Judge Michelson's jurisdiction are largely based on the alleged absence of personal jurisdiction over plaintiff, not subject matter jurisdiction. As previously discussed, only subject matter jurisdiction is relevant in determining immunity.

C. Failure to State a Claim

1. Plaintiff's Claims

Plaintiff challenges the legality of Judge Michelson's orders in two respects. First, he argues that both state law and due process require that a summons be served before a court can issue a judgment and that because he was not served with a summons, the judgments against him were invalid. Second, he argues that his incarceration was unlawful because (1) the state statute permitting incarceration does not apply to default judgments; (2) the statute applies only to violations of ordinances with statutory counterparts;[2] unlike the ordinances he was adjudged to have violated; (3) his incarceration constituted imprisonment for non-payment of a debt in violation of the Wisconsin Constitution; and (4) his incarceration constituted involuntary servitude or peonage in violation of the United States Constitution.[3] Defendants argue that plaintiff fails to state a claim under any of the foregoing theories.

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[2] In Wisconsin, municipalities may enact ordinances that prohibit the same conduct that a state statute prohibits. Such ordinances are said to have "statutory counterparts." *See* Wis. Stat. § 800.001; *see also City of Janesville v. Wiskia*, 97 Wis.2d 473, 482-83, 293 N.W.2d 522 (1980) (discussing the relationship between the prosecution of municipal ordinances and their statutory couterparts).

[3] In his complaint, he also alleges violations of the Fourth Amendment, abuse of process, false arrest, false imprisonment, trespass and conversion. Because I conclude that the arrests and incarcerations were lawful, these claims must fail. I do not address them separately.

2. Wisconsin Law Governing Municipal Courts and the Enforcement of Municipal Ordinances

An analysis of plaintiff's claims requires a discussion of the nature of municipal courts and municipal ordinances in Wisconsin and the evolution in the manner in which municipal ordinances are enforced. Actions to enforce municipal ordinances in Wisconsin are civil in nature, not criminal. Wis. Stat. §§ 66.0114, 800.02(1). The only remedy for violation of a municipal ordinance in municipal court is a forfeiture. *See id.* § 800.02(1). Both municipal and circuit courts have jurisdiction over actions alleging the violation of municipal ordinances. *See* Wis. Stat. § 755.045(1). Municipal courts' jurisdiction is limited to such actions, Wis. Const. Art. VII, § 14; Wis. Stat. § 755.045(1), whereas circuit courts have broader jurisdiction, Wis. Const. Art. VII, § 2.

Before 1975, when a party was cited for a municipal ordinance violation, the municipality had to commence an action against the defendant in municipal or circuit court in order to recover a forfeiture or even to obtain a stipulation for payment of the prescribed deposit. Wis. Stat. § 66.12(1)(b) (1973) (current version as amended at § 66.0113 and scattered sections of chapters 778 and 800). A municipality could not avoid filing a formal action even if the defendant admitted to the violation and paid the forfeiture. *See id.*; 1975 Assembly Bill 201, Analysis by the Legislative Reference Bureau 1 (on file with the Legislative Reference Bureau ("LRB")).[4]

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[4] All cited LRB analyses can be found on file with the LRB. The Wisconsin Supreme Court has stated that LRB analyses are significant in determining legislative intent. *Milwaukee v. Kilgore*, 193 Wis. 2d 168, 184, 532 N.W.2d 690 (1995).

In order to relieve this burden, in 1975 the legislature passed Chapter 201, thereafter codified as Wis. Stat. § 66.119 (1975) (current version as amended at § 66.0113 and scattered sections of chapters 778 and 800). This provision allowed a municipality to use citations to collect forfeitures for non-traffic offenses without issuing a summons or warrant if the defendant appeared in court or paid the prescribed deposit. *Id.* If the defendant did neither, the municipality then had to file an action by serving the defendant with a summons. *Id.* The citation would serve as the complaint. *Id.*

However, in 1988, the legislature passed 1987 Wis. Act 389 which obviated the need to file a summons in order to obtain a judgment for violation of a municipal ordinance. This legislation authorized a municipal court to enter a default judgment if the defendant received a citation that met certain requirements and failed to appear in court or enter a deposit. *See* Wis. Stat. § 800.04(2m); *see also* 1987 Senate Bill 379, Analysis by the LRB. However, due to an apparent oversight, the same power to enter default judgments was not granted to circuit courts. *See* Letter from J. Denis Moran, Director of State Courts, to James Fullin, Judicial Council Executive Secretary 1-2 (Nov. 1, 1990) (on file with the LRB) ("Municipal courts were granted the authority by 1987 Act 389 to take DJ's at initial appearance where the defendant fails to appear and fails to make a deposit. S. 800.04(2m). Apparently by oversight the provision was not made applicable to ordinance cases heard in circuit court ... Renee Randall of my office spoke with Pam Russell, the Legislative Council staffperson [sic] who worked on Act 389, and she has no recollection of any intent to give municipal courts more authority than circuit courts. She thinks the issue was simply never addressed.").

1987 Wis. Act 389 also created procedures for a municipal court to follow in enforcing a judgment; these procedures still apply today. In municipal court, if the defendant fails to comply with the judgment by paying the forfeiture, the court "shall issue a warrant to arrest the defendant and bring him or her before the court or a summons ordering the defendant to appear in court, or both." Wis. Stat. § 800.095(1). If the defendant fails to appear, the court can, among other things, order that the defendant "be imprisoned until the forfeiture, assessments, surcharge, and costs are paid, except that the defendant reduces the amount owed at a rate of at least $25 for each day of imprisonment." *Id.* § 800.095(4)(b)1. If, however, the court determines that the defendant's failure to pay is for good cause or due to indigence, the court cannot order imprisonment. *Id.* § 800.095(4)(b).

Recognizing the disparity in power to enter default judgments between municipal and circuit courts, the legislature in 1992 enacted 1991 Wis. Act 128, which amended then § 66.119 to give circuit courts the same ability as municipal courts to enter default judgments where a defendant fails to appear in court or enter a deposit. *See* Wis. Stat. § 66.119(1)(b)7d (1992) (current version as amended at Wis. Stat. § 66.0113); *see also* 1991 Assembly Bill 363, Analysis by the LRB 1(explaining that the bill was intended to make the procedure in circuit court match the procedure in municipal courts; "Under this bill, if the person fails to make a cash deposit and then fails to appear in circuit court for a municipal ordinance violation, the circuit court is given the option[] of entering a plea of no contest for the person and issuing a judgment for the forfeiture ....").

3. Analysis of Plaintiff's Claims

a. Is a summons required?

i. State law does not require a summons.

Plaintiff argues that the judgments entered against him were invalid under state law because the municipal court did not commence actions against him by serving summonses. However, under state law, no summons was required.

Plaintiff cites Wis. Stat. § 800.01(1) which governs the initiation of proceedings in municipal courts and states, "personal jurisdiction ... is obtained over a defendant when the defendant ... is served with a summons and complaint or citation." Plaintiff argues that this language means that a defendant must receive both a summons and either a complaint or citation. However, the language of the statute and its legislative history demonstrate that plaintiff's argument is without merit.

The statute treats a summons and a citation as alternative methods of providing process. Wis. Stat. § 800.01(2) ("If a summons or citation is personally served, the law enforcement officer or municipal employee serving the summons or citation shall ...."') (emphasis added); *id.* § 800.01(3) ("If the action is commenced by a citation ..."); *id.* § 800.04(2m) ("Upon proof of personal service of the summons or citation under s. 801.01(1), or upon proof of service of the summons or citation under 801.11(1)(b), the court may enter a default judgment by reason of the failure of a defendant to respond to a citation under s. 800.02(2)(a) or a summons under 800.02(4)."') (emphasis added). In addition, the chapter's prescribed citation form informs defendants that if they fail to appear or pay, a default judgment may be entered and makes

no mention of a summons preceding any such judgment. *Id.* § 800.02(2)(a)9. Finally, requiring a summons would serve no purpose because the citation form contains the same information that a summons would contain and more. *Compare id.* § 800.02(2)(a) to *id.* § 800.02(4)(a). Thus, considering the chapter as a whole, I conclude that it does not require service of a summons in order for a court to enter a default judgment. *Accord State ex rel. Hendricks v. Circuit Court*, 157 Wis. 2d 263, 459 N.W.2d 260, No. 90-0026- W, 1990 WL 118276, at *1 (Wis. App. Jun. 26, 1990) (unpublished disposition) (interpreting Wis. Stat. § 800.01(1) and reaching the same conclusion).

Legislative history also supports this conclusion. As discussed above, in passing 1987 Wis. Act 389, the legislature intended to permit municipal courts to enter default judgments without requiring municipalities to issue summonses first. *See* 1987 Senate Bill 379, Analysis by the LRB 1-2 (explaining that under the bill, "upon proof of service of the summons or citation, the court may enter a default judgment ...."); *see also* 1991 Assembly Bill 363, Analysis by the LRB 1 (on file with the LRB) (discussing 1987 Wis. Act 389).

Plaintiff cites several pieces of legislative history from 1974 and 1975 regarding the enactment of what is now § 66.0113 as evidence that a summons is always required. I agree that, as originally enacted, § 66.0113 required more than a citation in order for a court to enter a default judgment. However, as discussed above, state law has changed since then. The authority cited by plaintiff does not show that a summons is required today. In fact, plaintiff's use of legislative history is not only unpersuasive, it is disingenuous. If plaintiff's counsel read the documents he cites in their entirety and in the context of the LRB file history, he could

not reasonably conclude that they mean what he says they mean.

Plaintiff cites an August 6, 1974 letter from Robert E. Olsen, an assistant city attorney in Madison to the city attorney, Edwin C. Conrad, (on file with the LRB) for the proposition that a summons is always required. In this letter, Olsen discusses the law as it was in 1974 and recommends that it be amended. Indeed, the law was so amended in 1975, 1988 and 1992, as discussed above. In his brief, plaintiff's counsel fails to mention these amendments even though some were recommended by Olsen and followed directly on the heels of his letter. Instead, counsel quotes the letter at length as if it were an explanation of the present law. (R. 28 at 9; R. 44 at 7.)

Even more troubling is counsel's citation to a letter from J. Denis Moran, Director of State Courts, to James Fullin, Judicial Council Executive Secretary (Nov. 1, 1990) (on file with the LRB) for the proposition that a citation provides insufficient process in municipal courts. The first paragraph of this letter expressly states that, under the current law, a citation alone is sufficient for actions in municipal courts. *Id.* at 1. The letter goes on to explain that in circuit courts, on the other hand, a citation is insufficient. *Id.* Counsel for the plaintiff ignores the statements about municipal courts and misleadingly quotes the portion of the letter that addresses only circuit courts as evidence of the rules in municipal courts. (R. 44 at 8.)

ii. Due process does not require a summons.

Plaintiff further argues that even if state law does not require a summons, constitutional due process does. Due process requires,

> Notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance.

Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15, 70 S. Ct. 652, 94 L. Ed. 865 (1950). The constitution does not prescribe the form of such notice. *See id.* Thus, it does not require a summons, as opposed to some other form of notice. At least one district court in this circuit has indicated that a citation system by itself can suffice. *Saukstelis v. City of Chi.*, 1990 U.S. Dist. LEXIS 12999, No. 89- C-9268, 1990 WL 146711, at *6 (N.D. Ill. Oct. 3, 1990), *aff'd*, 932 F.2d 1171 (7th Cir. 1991) (finding that plaintiffs had no reasonable likelihood of showing that traffic citations failed to provide notice adequate to satisfy due process).

Plaintiff argues that *Bomar v. Keyes*, 162 F.2d 136 (2d Cir. 1947) supports the proposition that due process requires a summons. However, *Bomar* addresses whether a statute of limitations is tolled from the date of the filing of a complaint or of the service of the summons and complaint and is irrelevant to the issue before me. *Id.* at 138-41. Due process is never mentioned.

Finally, plaintiff points to Fed. R. Civ. P. 3 and 4, which require a summons for actions in federal court. However, the fact that the Federal Rules may require federal courts to issue summonses to initiate actions does not mean that due process imposes such a requirement on all courts. Thus, this argument is rejected as well.

b. Can a municipal court incarcerate a defendant who fails to comply with a default judgment?

i. State statutes allow incarceration.

Section 800.095 addresses municipal courts' procedures and remedies for enforcing their judgments and authorizes incarceration for non-compliance. Plaintiff makes the following argument as to why the statute does not authorize incarceration as a means of enforcing a default judgment: Section 800.095(4)(b) authorizes a municipal court to incarcerate a defendant who fails to appear in response to a warrant or summons issued pursuant to § 800.095(1). Section 800.095(1), in turn, authorizes a court to issue a warrant or summons when a defendant fails to "comply with the judgment of the court under s. 800.09(1)," which authorizes the court to enter judgment when it "finds a defendant guilty[]." Plaintiff argues that "finding a defendant guilty" differs from a determination of guilt based on a plea of guilty or no contest or based on a failure to defend and that, therefore, if the defendant pleads or defaults, the procedures and remedies under § 800.095 for the enforcement of judgments may not be utilized.

Plaintiff's argument fails for several reasons. First, it is based on the false premise that if § 800.095 does not authorize his incarceration, then he cannot be incarcerated

and, indeed, that municipal courts cannot enforce their own default judgments. However, all courts in Wisconsin have the inherent power to take actions to enforce their orders. *See State ex rel. V.J.H. v. C.A.B.*, 163 Wis. 2d 833, 845, 472 N.W.2d 839 (Ct. App. 1991). Municipal courts are no exception. *Kilgore*, 193 Wis. 2d at 187. This "power exists as a necessary incident to the exercise of judicial power and is reasonably to be implied from the grant of such power." *See id.* Thus, because state law authorizes municipal courts to enter default judgments, Wis. Stat. § 800.04(2m), municipal courts can enforce them.

Second, analysis of the statutory language makes clear that § 800.095 authorizes the incarceration of defendants for non-compliance with default judgments. Section 800.09(1) authorizes a court to enter judgment after it "finds a defendant guilty." One of the meanings of "find," in a judicial context is to "determine and declare," *Webster's Third New International Dictionary of the English Language Unabridged* 852 (3d ed. 1986), or "to pronounce as an official act," *Random House Webster's College Dictionary* 487 (2d ed. 1997). So construed, "finds" would include any judgment rendered by a court, whether after a trial or by default. All are official pronouncements or declarations.

The titles of the subsections of § 800.09 also support this interpretation. *See Mireles v. Labor & Indus. Review Comm'n*, 2000 WI 96, 237 Wis. 2d 69, 93 n.13, 613 N.W.2d 875 (2000) (stating that titles offer "persuasive evidence of statutory interpretation"). Subsection (1) is entitled simply "Judgment," indicating that it covers all judgments, whether entered after a trial, after a plea or based on the defendant's default. Subsection (2), entitled "Judgment on plea of guilty or no contest for failure to appear" is, thus, better interpreted

as addressing in more detail categories of judgments also covered by subsection (1).

Contrary to plaintiff's position, the language of § 800.09 and 800.095 does not indicate that § 800.095 applies only to judgments entered after trial. Subsection (1) of § 800.09 identifies the obligations to which payments received on a judgment are applied and in what order and outlines the procedures that may be used to obtain payments. Subsection (2)(a) provides for the entry of judgment after a plea of guilty or no contest; and subsection (2)(b) provides that when the defendant fails to appear, the court may summon him or her in order to determine if restitution should be ordered. Nothing in subsection (2) suggests that the way in which payments are applied and the enforcement remedies outlined in subsection (1) are inapplicable to judgments imposed under subsection (2). Section 800.095 sets forth in detail the steps that a municipal court must take and the options available to it when a defendant fails to comply with a judgment. It contains no language indicating that it only applies to judgments entered after trial.

Moreover, interpreting §§ 800.09(1) and 800.095 as applying only to judgments after trial and not to default judgments, as plaintiff proposes, would be unreasonable. No section in chapter 800 or anywhere else discusses a municipal court's procedures and options for enforcing default judgments in particular. Thus, plaintiff's interpretation would mean that the Wisconsin legislature created no procedures for the enforcement of default judgments and, instead, left such procedures to the uncertainties of common law. This conclusion is unreasonable and made particularly unlikely by the detail with which the legislature addressed the procedures for the enforcement of judgments under §§ 800.01(1) and 800.095. I must interpret statutes so as to "avoid unreasonable

and absurd results." *See NCR Corp. v. Dep't of Revenue*, 128 Wis. 2d 442, 456, 384 N.W.2d 355 (Ct. App. 1986).

The legislative history confirms that § 800.095 authorizes municipal courts to order incarceration to enforce default judgments. Before the enactment of 1987 Wis. Act 389, which created §§ 800.09 and 800.095, municipal courts could jail defendants who failed to pay judgments, including judgments of default. Wis. Stat. § 800.09(1) (1977) (amended 1988); *see also Kilgore*, 193 Wis. 2d at 184 (quoting 1987 Senate Bill 379, Analysis by the LRB 2). 1987 Wis. Act 389 was intended to "add new procedures and options" for enforcement, not revoke existing options or create different procedures for default judgments. *See Kilgore*, 193 Wis. 2d at 184 (internal quotation marks and citation omitted). Thus, the legislature intended that municipal courts would continue to have the power to incarcerate.

Further, the LRB analysis of the Senate bill that ultimately became 1987 Wis. Act 389 expressly discusses the provisions permitting default judgments and, only a few sentences later, discusses the provisions for enforcement of judgments without stating that the enforcement provisions do not apply to the type of judgments just discussed. 1987 Senate Bill 379, Analysis by the LRB 2. The only logical interpretation of the LRB's analysis is that the enforcement provisions were intended to apply to default judgments.

Plaintiff offers no evidence in support of his position that "finds" is limited to a finding of guilty after trial or that the legislature intended for there to be an alternate system for enforcing default judgments. For the foregoing reasons, I conclude that §§ 800.09(1) and 800.095 encompass default judgments. Thus, a municipal court can under state law order

a defendant incarcerated for failure to comply with a default judgment.

ii. State law does not limit incarceration to failure to comply with judgments based on ordinances with statutory counterparts.

Next plaintiff argues that even if the municipal court can jail defendants, that power only extends to violations of ordinances with statutory counterparts. In support of this argument, plaintiff points to the Historical and Statutory Notes for § 800.095 which state in part as follows:

> 1991 Act 40, § 23 provides: "Initial applicability: This act first applies to persons who, on the effective date [Jan. 1, 1992] of this Section, violate ordinances that prohibit conduct that is the same as or similar to conduct prohibited by state statute punishable by fine or imprisonment or both."

However, plaintiff misreads this language. 1991 Wis. Act 40 made several amendments and additions to chapters 66, 755 and 800, including adding new rules for proceedings involving violations of ordinances with statutory counterparts, and made several technical amendments to § 800.095. The language that plaintiff cites merely sets an effective date for those new provisions regarding statutory counterpart ordinances. It does not limit the substantive scope of § 800.095. Thus, plaintiff's argument is rejected.

iii. Plaintiff's incarceration does not constitute imprisonment for non-payment of a debt.

Plaintiff also argues that his incarceration violates article I, § 16 of the Wisconsin Constitution. This provision states, "No person shall be imprisoned for a debt arising out of or founded on a contract, express or implied." Plaintiff argues that "civil forfeitures are in the nature of a debt," (R. 28 at 28 (citing 49 Wis. Op. Att'y Gen. 22 (1960)); thus, incarceration for failure to pay a forfeiture violates this constitutional provision. However, plaintiff was not incarcerated because he owed a debt; he was incarcerated because he ignored the direct orders of a court. "[A] duty imposed by the court" is not a "debt" within the meaning of Wis. Const. art. I, § 16, even if it requires the payment of money. *O'Connor v. O'Connor*, 48 Wis. 2d 535, 539, 180 N.W.2d 735 (1970); *see In re Milburn*, 59 Wis. 24, 17 N.W. 965 (1883). Thus, plaintiff does not state a claim for violation of Wis. Const. art. I, § 16.

iv. Plaintiff's incarceration for failure to comply with court orders is not involuntary servitude or peonage.

Plaintiff also argues that his incarceration for failure to comply with a judgment of forfeiture constitutes involuntary servitude and peonage in violation of the Thirteenth Amendment and 18 U.S.C. §§ 241 and 1584. The Thirteenth Amendment states, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." U.S. Const. amend. XIII. Plaintiff argues that he was not convicted of a crime; therefore, he could not be incarcerated.

Plaintiff's involuntary servitude claim is rejected because plaintiff's incarceration was not involuntary. Involuntary servitude exists where "the victim had no available choice but to work or be subject to legal sanction." *United States v. Kozminski*, 487 U.S. 931, 934, 108 S. Ct. 2751, 101 L. Ed. 2d 788 (1988). Plaintiff in the case before me had other choices: He could have paid the forfeitures or demonstrated to the municipal court that he was financially unable to pay. *See* Wis. Stat. § 800.095(4)(a), (b). Indeed, had plaintiff shown that he was unable to pay, Judge Michelson could not have lawfully ordered his incarceration. *Id.* Rather than choose either of these routes and avoid jail, plaintiff chose to ignore the court's orders and warnings. Plaintiff's eventual imprisonment was, therefore, not involuntary.

Plaintiff's incarceration did not constitute peonage either. Peonage is a "'condition of compulsory service, based upon the indebtedness of the peon to the master ... The peon can release himself, therefrom, ... by the payment of the debt, but otherwise the service is enforced.'" *United States v. Reynolds*, 235 U.S. 133, 144, 35 S. Ct. 86, 59 L. Ed. 162 (1914) (quoting *Clyatt v. United States*, 197 U.S. 207, 215, 25 S. Ct. 429, 49 L. Ed. 726 (1905)). Even assuming that the judgments against plaintiff are properly characterized as debts, plaintiff was not a "peon" because he could release himself not only by paying, but by showing that he could not afford to pay.

The facts of the cases that plaintiff cites are a far cry from the facts of the case before me. In *Kozminski*, the defendants, farm owners, forced two mentally retarded men to work without pay and live in "squalid conditions." 487 U.S. at 934. The men were subjected to physical and verbal abuse and prevented from leaving. *Id.* at 935. *Clyatt* concerned two men who were forcibly captured and transported to work for a

man to whom they allegedly owed a debt. 197 U.S. at 223 (Harlan, J. concurring). In *Reynolds*, the Court struck down a criminal surety system under which a person fined for an offense could contract to work for a surety who would then pay the convict's fine. 235 U.S. at 146-50. The convict's breach of the surety agreement was a crime. *Id.* at 146. Plaintiff, on the other hand, flouted the direct orders of a court and made no attempt to demonstrate that his incarceration was not permitted. Thus, he was eventually jailed only because of his own obstinance.

Furthermore, even if plaintiff's incarceration could be characterized as involuntary, the prohibition against involuntary servitude does not prevent governments "from compelling their citizens, by threat of criminal sanction, to perform certain civic duties." *See Kozminski*, 487 U.S. at 943-44; *accord Hurtado v. United States*, 410 U.S. 578, 589 n.11, 93 S. Ct. 1157, 35 L. Ed. 2d 508 (1973) (upholding compulsory jury service); *Arver v. United States*, 245 U.S. 366, 390, 38 S. Ct. 159, 62 L. Ed. 349 (1918) (upholding compulsory military service); *Butler v. Perry*, 240 U.S. 328, 330-33, 36 S. Ct. 258, 60 L. Ed. 672 (1916) (upholding law compelling able-bodied men to perform road work); *Beltran v. Cohen*, 303 F. Supp. 889, 893 (N.D. Cal. 1969) (upholding levy on wages to collect unpaid federal income taxes). Complying with court orders and judgments is a civic duty. Thus, forced labor or incarceration to compel compliance with these orders when one has not demonstrated that he or she is unable to comply is not prohibited by the Thirteenth Amendment.

IV. CONCLUSION

For the forgoing reasons,

IT IS ORDERED that the case is **DISMISSED** for lack of subject matter jurisdiction. The clerk of court is instructed to enter judgment accordingly.

IT IS FURTHER ORDERED that in the event, my jurisdictional ruling is incorrect, defendants' motions to dismiss are **GRANTED;** and the case is **DISMISSED.**

Dated at Milwaukee, Wisconsin, this 16 day of January, 2003.

/s/_____
LYNN ADELMAN
District Judge

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the case is **DISMISSED** for lack of subject matter jurisdiction.

January 16, 2003
Date

(1)

No. 04-0625

Supreme Court, U.S.
FILED
DEC 10 2004
OFFICE OF THE CLERK

In The

Supreme Court of the United States

GERARD N. HAAS, JR.,

Plaintiff-Petitioner,

v.

STATE OF WISCONSIN, et al.,

Defendants-Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

I. The Seventh Circuit Properly Affirmed the District Court's Dismissal Of Haas' Claims On Their Merits For Failure To Allege A Constitutional Violation

Gerard N. Haas ("Haas") desires to change the relationship between a municipal court and the defendants that appear before it. In that pursuit, his prior arguments have focused on the provisions of the Wisconsin Statutes relating to municipal courts, arguing that service of a municipal citation does not constitute commencement of an action.

Haas' petition before this Court does not raise the argument that is the very heart of his case. The omission of a discussion of the municipal court's statutory authority is not an accident. For Haas to acknowledge the authority of the municipal court over municipal court matters is contrary to his argument that the municipal court lacks subject matter jurisdiction.

A. All Actions In Racine Municipal Court Were Properly Commenced Against Haas

The jurisdiction of Wisconsin municipal courts is substantial within the framework of municipal ordinance violations and other municipal law matters.

> We conclude that, once a court, including a municipal court, appropriately invokes its jurisdiction, it has the power to exercise all of its constitutional powers within the framework of that conferred jurisdiction. Thus, in the exercise of its jurisdiction in the instant case in respect to the municipal ordinance, which is unquestioned,

> it could, in fulfillment of its jurisdictional mission, invoke all judicial powers that are not specifically denied.
>
> Therefore, municipal courts, once created by the legislature and by appropriate municipal action, are courts endowed with all judicial powers not expressly denied them, which powers may be exercised in all cases that fall within their jurisdiction. We hold that the municipal court has the authority to determine the constitutionality of an ordinance that is the basis of an action brought before it.

Milwaukee v. Wroten, 160 Wis. 2d 207, 222-23, 466 N.W.2d 861 (1991).

The power of a municipal court is not limited to those specific instances where the action is authorized by statute. Rather, within the confines of municipal ordinance violations, a municipal court has significant authority. *City of Kenosha v. Jensen*, 184 Wis. 2d 91, 98, 516 N.W.2d 4 (Ct. App. 1994) ("We conclude that a municipal court has the inherent authority to vacate a void judgment irrespective of statutory requirements for reopening judgments.").

B. Upon Filing And Service Of A Citation, The Wisconsin Statutes Explicitly Confer Subject Matter Jurisdiction And Personal Jurisdiction Over Haas In The Racine City Court

Wis. Stat. § 800.01 governs the "Commencement of action" in municipal court.

> In municipal court, personal jurisdiction in municipal ordinance violation cases and cases involving a violation of a resolution or bylaw if the

> resolution or bylaw is authorized by statute is obtained over a defendant when the defendant:
>
> (a) Is served with a summons and complaint or citation and such documents are filed with or transmitted to the court;
>
> (b) Is arrested and brought before the court personally, or in the municipal court of a 1st class city, personally or through interactive video and audio transmission conducted in accordance with the rules of the 1st judicial administrative district; or
>
> (c) Voluntarily appears before a municipal judge.

§ 800.01 Wis. Stats.

Per the express language of the statute, the Racine City court acquired personal jurisdiction when Haas was served with the citation and the documents were filed with or transmitted to the court. This unequivocal statement of personal jurisdiction completely disposes of Haas' arguments regarding a lack of jurisdiction. Haas does not contend that the citations were never served on him; service is not an issue.

Haas offers no authority to support his lack of subject matter jurisdiction argument. He does not contend that he was charged with a crime, such that Racine County circuit courts would properly have jurisdiction. Indeed, he has previously emphasized the violations with which he was charged were all non-criminal in nature. He does not contend that the Racine municipal court lacked the power to try cases involving violations of Racine municipal ordinances or impose forfeitures for violating Racine municipal ordinances. Wis. Stat. § 755.045(1).

As noted by the District Court, Wisconsin municipal court judges

> have jurisdiction over municipal ordinance violations. Wis. Const. art. VII, sec. 14; Wis. Stat. sec. 755.045(1). State law empowers them to enter default judgments under Wis. Stat. sec. 800.04(2m), issue warrants and summonses under sections 800.04.(2m) and 800.095(b)1, and, in some cases, order incarceration for failure to comply under sec. 800.095(b)1.

(Pet. App. B, 23a). Throughout his petition, Haas repeatedly confuses personal jurisdiction with subject matter jurisdiction.

§ 800.04(2m) Wis. Stats. provides:

> If the defendant does not appear at the initial appearance, the court may issue a warrant to bring the defendant before the court. Upon proof of personal service of the . . . citation under s. 800.01(1), or upon proof of service of the . . . citation under s. 801.11(1)(b), the court may enter a default judgment by reason of the failure of the defendant to respond to a citation under § 800.02(2)(a). . . . If a warrant is issued for a defendant under this subsection, the defendant may be detained in jail prior to the initial appearance.

Haas concedes that he deliberately failed to appear in court or make a cash deposit. Judge Michelson properly found that Haas had entered a plea of no contest and entered judgment against Haas.

If Haas read the citations he received, he would have known that a default judgment could be entered against

him if he failed to appear. § 800.02(2)(a) reads, in salient part:

> The citation shall contain substantially the following information: [. . .] 9. Notice that if the defendant does not make a deposit and fails to appear in court at the time fixed in the citation, the court may issue a summons or a warrant for the defendant's arrest *or may enter a default judgment* against the defendant.

(Emphasis added.)

Under § 66.0114(1)(a) Wis. Stats., "[a]n action for violation of an ordinance . . . enacted by a city . . . is a civil action. All forfeitures and penalties imposed by an ordinance . . . of the city . . . may be collected in an action in the name of the city. . . . " Significantly, § 66.0114(1)(a) states: "If the action is in municipal court, the procedures under ch. 800 apply *and the procedures under this section do not apply*." (Emphasis added.)

§ 800.095(1) states:

> If the defendant does not comply with the judgment of the court under s. 800.09(1), the court shall issue a warrant to arrest the defendant and bring him before the court or a summons ordering the defendant to appear in court, or both. The defendant may be incarcerated prior to the court appearance.

Haas could lawfully have been jailed under a warrant even *before* the commitment against him was issued. Instead, Judge Michelson issued a summons to Haas to appear in court for an indigency hearing under § 800.095(4). As with the citation, service of the summons is proper under § 800.01(2) per § 800.095(3). Service under § 800.01(2) can be personal service, substitute service, service by publication, or service by mail.

§ 800.095(4)(b) provides:

> If the defendant fails to appear before the court for a hearing under par. (a) [the indigency hearing] . . . the court shall order one of the following: 1. That the defendant be imprisoned until the forfeiture, assessments, surcharge and costs are paid, except that the defendant reduces the amount owed at a rate of at least $ 25 for each day of imprisonment, including imprisonment following arrest but prior to the findings under this subsection, and the maximum period of imprisonment is 90 days.

Michelson lawfully issued a commitment upon Haas' failure to appear at his indigency hearing. Under § 800.095(6), when Michelson ordered Haas' imprisonment under § 800.095(4)(b)1, "the defendant shall be committed to a jail . . . in the county in which the cause of action arose. . . . " Not only was the commitment of Haas legal, his commitment had to be to the Racine county jail.

II. Judge Michelson Is Protected By Absolute Judicial Immunity That Extends To Officers Executing Judicial Process.

Haas' focus is primarily on the actions of the municipal court, with virtually no reference to the County Defendants or the State Defendants. Haas does not raise issues unique to these parties, but rather apparently contends that their liability flows from their attenuated involvement in the actions of the municipal court.

The existence of jurisdiction over Haas having been established, Haas' arguments relating to *per se* liability of Judge Michelson and all of those who acted subsequently are without merit. The so-called "judicial jurisdiction"

exception is not implicated. Haas does not contend that the officers are unable to assert judicial immunity based on their enforcement of the municipal court's orders, but rather that judicial immunity does not apply to Judge Michelson and thus there is nothing to extend to the Officers. Although not developed in the petition, Haas' prior arguments have asserted these officers should have refused to comply with otherwise valid judicial orders as a result of the Constitutional violations he alleges.

Judges enjoy absolute immunity for their judicial acts. *Stern v. Masico*, 262 F.3d 600 (6th Cir. 2001). The same immunity rationale applies to sheriff's deputies, state troopers, and municipal law enforcement officers alike who are executing judicial process. *Cooper v. Parrish*, 203 F.3d 937 (6th Cir. 2001)

> Personal jurisdiction over the complaining party is not considered when determining judicial immunity. [Citations omitted.] 'Where not clearly lacking subject matter jurisdiction, a judge is entitled to immunity even if there was no personal jurisdiction over the complaining party.'

Crenshaw v. Dywan, 34 F.Supp.2d 707 (N.D. In. 1999) *accord*, *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990). Personal jurisdiction and subject matter jurisdiction are distinct concepts.

The *Crenshaw* court used this example from *Briscoe v. La Hue*, 663 F.2d 713, 722, n. 5 (7th Cir. 1981), to demonstrate the difference between acting in the clear absence of jurisdiction and acting in excess of jurisdiction:

> [I]f a probate judge, with jurisdiction over only wills and estates, should try a criminal case, he

> would be acting in the clear absence of jurisdiction and could not be immune from liability for his action; on the other hand, if a judge of a criminal court should convict a defendant of a nonexistent crime, he would be merely acting in excess of his jurisdiction and would be immune.

Crenshaw, 34 F.Supp.2d at 712. This refutes Haas' contention that Judge Michelson is liable for issuing the commitments. Even if Haas' contentions had merit, Judge Michelson's actions in issuing the commitments would only be in excess of – not outside – the court's jurisdiction.

The Seventh Circuit has called the principle

> fundamental . . . that judges are entitled to absolute immunity from damages for their judicial conduct. [Citations omitted.] Judicial immunity was recognized at common law 'as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error' and to 'protect[] judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants.'

Richman v. Sheahan, 270 F.3d 430, 434-435 (7th Cir. 2001).

The *Richman* court also noted that "quasi-judicial" immunity extends to law enforcement officers who are doing no more than is commanded by the judicial process with which they are presented.

> For example, we have recognized absolute immunity for law enforcement officials when the challenged conduct (the mere act of enforcing a foreclosure judgment) was specifically ordered by

> the judge. . . . The source of the plaintiffs' wrong in *Henry v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986) was the judge's order itself, and we reasoned that a suit against the officers was not the appropriate vehicle for challenging the validity of that order. . . . Under those circumstances, extension of absolute immunity is not primarily to protect the enforcement action performed by the deputies, but rather to protect the judicial decision-making function by discouraging collateral attacks and encouraging appeals.

270 F.3d at 436-437. Haas does not allege unreasonableness, such as excessive force under the Fourth Amendment, in executing the Racine municipal commitments. Rather, he alleges that the judgment and the enforcement thereof was *per se* unlawful.

Haas cannot show the City or County Officers had an independent duty to inquire into the validity of his incarceration. *Thompson v. Duke*, 882 F.2d 1180 (7th Cir. 1989) (county's incarceration of parolee without making independent finding as to validity of incarceration could not serve as basis for Section 1983 liability where the jail staff acted according to their duties under state law and had no duty or authority to determine the validity of the confinement). Seventh Circuit precedent unambiguously precludes recovery against the Officers for their role as temporary custodian of Haas:

> Mr. Maltby's claim against Sheriff Bond fails because there is no evidence that Sheriff Bond was personally involved in the alleged violation. We have stated that "[t]o recover from damages under 42 U.S.C. § 1983, a plaintiff must establish defendant's personal responsibility for the claimed deprivation of the constitutional right.

> However, a defendant's direct participation in the deprivation is not required. An official satisfies the personal responsibility requirement of section 1983 if she acts or fails to act with a deliberate or reckless disregard of plaintiff's constitutional rights, or if the conduct causing the constitutional deprivation occurs at her direction or with her knowledge and consent." *Rascon v. Hardiman,* 803 F.2d 269, 273 (7th Cir. 1986) (quoting *Smith v. Rowe,* 761 F.2d 360 (7th Cir.1985) (citations omitted)). There are no facts presented, however, that evidence any kind of personal involvement by Sheriff Bond in the alleged constitutional violation. Sheriff Bond did not participate in the transaction, in the arrest, the preliminary hearing, or any part of the prosecution of Mr. Maltby. Sheriff Bond was Mr. Maltby's custodian and nothing else. Consequently, there is not sufficient evidence for a jury to hold Sheriff Bond liable for any of Mr. Maltby's alleged constitutional violations.
>
> Sheriff Bond's continued detention of Mr. Maltby after his claim of innocence does not constitute a constitutional violation. *Cf. Baker v. McCollan,* 443 U.S. 137, 145-46, 99 S.Ct. 2689, 2695, 61 L.Ed.2d 433 (1979) (stating that official charged with custody of accused has no independent duty to investigate even repeated claims of innocence by the accused).

Maltby v. Winston, 36 F.3d 548, 559 (7th Cir. 1994). Haas cannot show a Constitutional violation.

Once the City of Racine Officers presented the plaintiff for incarceration, the jail staff was authorized to take him into custody. §§ 302.30 and 302.31, Wis. Stats. Section

1983 does not impose liability for mere enforcement of state laws.

> The plaintiff who wants a judgment against the municipality under [section 1983] must be able to trace the action of the employees who actually injured him to a policy or other action of the municipality itself. When the municipality is acting under compulsion of state or federal law, it is the policy contained in that state or federal law, rather than anything devised or adopted by the municipality, that is responsible for the injury. Apart from this rather formalistic point, our position has the virtue of minimizing the occasions on which federal constitutional law, enforced through section 1983, puts local government at war with state government.

Bethesda Lutheran Homes and Svcs., Inc. v. Leean, 154 F.3d 716 (7th Cir. 1998).

The primacy of state law in this dispute eliminates the relevance of the state of mind of the individual defendants.

> [T]he state of mind of local officials who enforce or comply with state or federal regulations is immaterial to whether the local government is violating the Constitution if the local officials could not act otherwise without violating state or federal law. The spirit, the mindset, the joy or grief of local officials has no consequences for the plaintiffs if these officials have no discretion that they could exercise in the plaintiffs' favor. "[M]unicipal liability under § 1983 attaches where – and only where – a deliberate choice to follow a course of action is made from among various alternatives." *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483, 106 S.Ct. 1292, 89

> L.Ed.2d 452 (1986) (plurality opinion); see also *West v. Waymire*, 114 F.3d 646, 651 (7th Cir.1997). That was the case in *Garner*, but not here. The injury of which the plaintiffs are complaining would have occurred regardless of the state of mind of the officials of Jefferson County, unless they had decided to disobey state and federal law that forbade the granting of Wisconsin residency to the individual plaintiffs – and it is the denial of Wisconsin residency that is the source of injury.

Bethesda Lutheran, 154 F.3d at 718-19.

Further, the requirement that local officials must have "a deliberate choice" precludes the imposition of liability on the individual defendants for actions in performing their duties at the direction of a judge.

> The county also is immune because the sheriff, although a non-judicial officer, is performing a ministerial function at the direction of a judge. A ministerial act is one which is 'absolute, certain, and imperative, involving merely the performance of a specific task where the law imposes, prescribes and defines the time, mode and occasion for its performance with such certainty that nothing remains for judgment or discretion.'
>
> *Id.* at 499, 466 N.W.2d at 651 (quoting *Pavlik v. Kinsey*, 81 Wis. 2d 42, 50, 259 N.W.2d 709, 712 (1977)). "[E]ven when a nonjudicial officer performs a ministerial function, but *at the direction of a judge* who is acting in a judicial capacity, that officer is cloaked with absolute immunity from civil liability." *Id.* (emphasis in original). An officer to whom a facially valid warrant is given is not charged with the duty of passing upon its underlying sufficiency. *Chruscicki v. Hinrichs*,

> 197 Wis. 78, 82, 221 N.W. 394, 395 (1928). On the contrary, when an arrest warrant is delivered to an officer, it becomes his duty to execute it. *Id.* It is beyond the scope of a nonjudicial officer's duties to second-guess a judge's order. See *Ford*, 160 Wis. 2d at 501, 466 N.W.2d at 652. As a result, the sheriff had no discretion to question the writ, as [plaintiff] asserts, but instead had a duty to execute it.

Sell v. Thompson & Coates, Ltd., 163 Wis. 2d 765, 773-74, 472 N.W.2d 834 (Ct. App. 1991). Haas cannot show the officers had discretion to refuse to accept custody of the plaintiff. As a result, there is no basis for liability under § 1983.

The Seventh Circuit has repeatedly recognized a sheriff is immune from suit under § 1983 when acting pursuant to a court order:

> As we stated in *Henry v. Farmer City State Bank*, 808 F.2d 1228, 1238-39 (7th Cir. 1986), a Sheriff was immune from suit under § 1983 because he "was at all times acting pursuant to an official court order to enforce a validly entered judgment when he performed the allegedly wrongful acts of which [the defendants] now complain." We concluded that "[t]o allow [the plaintiff] to attack the order collaterally by bringing a § 1983 suit against the Sheriff for damages would require sheriffs . . . who enforce properly entered judgments pursuant to facially valid court orders to act as appellate courts, reviewing the validity of both the enforcement orders and the underlying judgments before proceeding to collect on them." *Id.* at 1239. Such a result is untenable. *Id.* The same rationale applies in Wollin's case. Deputies Gondert and Seidel were acting pursuant to an

> order, issued by a duly appointed officer of the court, to take Wollin into custody if he failed to surrender his firearms and ammunition to the officers upon demand on November 28, 1995, and the deputies could not be expected to review or reject the Commissioner's unequivocal order to arrest Wollin if he failed to surrender his weapons and ammunition upon demand. Accordingly, we refuse to hold, as Wollin wishes, that the deputies should be subject to civil liability for enforcing the Court Commissioner's order.

Wollin v. Gondert, 192 F.3d 616, 624-25 (7th Cir. 1999).

The officers are entitled to absolute judicial immunity when acting pursuant to a judicial order. *Sell*, 163 Wis. 2d at 772 (". . . we conclude that the county is immune from liability because a sheriff has absolute immunity when executing judicial orders").

> We hold that even when a non-judicial officer performs a ministerial function, but at the direction of a judge who is acting in a judicial capacity, that officer is cloaked with absolute immunity from civil liability. We note that this holding has also been reached in the majority of the United States Circuit Courts. *Foster v. Walsh*, 864 F.2d 416 (6th Cir. 1988); *Rogers v. Bruntrager*, 841 F.2d 853 (8th Cir. 1988); Henry *v. Farmer City State Bank*, 808 F.2d 1228 (7th Cir. 1986); *Slotnick v. Garfinkle*, 632 F.2d 163 (1st Cir. 1980); *Williams v. Wood*, 612 F.2d 982 (5th Cir. 1980); *Waits v. McGowan*, 516 F.2d 203 (3d Cir. 1975).
>
> By following the judge's order, the non-judicial officer is acting as a hand of the court. The nature of the function performed is 'judicial.' Therefore, the act is a quasi-judicial act, even though it may

> be non-discretionary. See *Foster v. Walsh*, 864 F.2d at 418.

Ford v. Kenosha County, 160 Wis. 2d 485, 499-500, 466 N.W.2d 646 (1991).

Haas' attempts to recast the nature of the judge's actions are wholly without focus, let alone merit. At page 20 of the petition he states, without any evidentiary or legal basis, that the orders of the municipal court could have "just as easily have been assigned to a court clerk. . . . " This transparent attempt to portray the order as an administrative function is flatly contradicted by the petitioner' claims against the State Defendants. These claims are based on manuals and seminars that instruct municipal judges, not court clerks, to issue commitment orders.

> The State Defendants produced training manuals and held training seminars instructing Wisconsin municipal judges to order the arrest and incarceration of persons defaulting on payment of civil forfeiture debts to a particular municipality.

Petition, p. 3.

Hass then invokes *Supreme Court of Virginia v. Consumers Union of U.S., Inc.*, 446 U.S. 719, 100 S.Ct. 1967 (1980), a case involving judicial rulemaking in a legislative capacity.

> "Disciplinary rules are rules of general application and are statutory in character. They act not on parties litigant but on all those who practice law in Virginia. They do not arise out of a controversy which must be adjudicated, but instead out of a need to regulate conduct for the protection of

> all citizens. It is evident that, in enacting disciplinary rules, the Supreme Court of Virginia is constituted a legislature." 470 F.Supp., at 1064. We agree with this analysis and hence must inquire whether the Virginia Court and its chief justice are immune from suit for acts performed in their legislative capacity.

Id. at 1974. Although he is confident the actions of the municipal court were not taken in a judicial capacity, Haas apparently cannot decide whether the actions were taken in a legislative or an administrative capacity.

III. Haas Was Not Incarcerated For Failure To Pay A Debt And His Incarceration Did Not Violate Wisconsin Law, The 13th Amendment Or 42 U.S.C. § 1994

A. Haas Cannot Show A Violation Of Wisconsin Law

As the district court correctly observed, "plaintiff [Haas] was not incarcerated because he owed a debt; he was incarcerated because he ignored the direct orders of a court." (Pet. App. B, 38a.) The district court also noted that Haas could have appeared before Judge Michelson, and – if Haas demonstrated his inability to pay the forfeitures – the judge could not have ordered Haas committed to the Racine county jail. (Pet. App. B, 39a.) *See also* Wis. Stat. § 800.095(4).

Haas' arguments related to peonage are based on a premise that is not contained within the confines of Haas' petition, let alone established in law. Haas has previously argued a civil forfeiture is "in the nature of a debt founded on express or implied contract", referring to the loose

conception of a "social contract" that forms the basis of society and governmental power in an abstract and philosophical sense. Haas equates imprisonment for the contumacious refusal to pay forfeitures as imprisonment for debt arising out of implied contract.

It is far from clear that the "implied social contract" of Blackstone is the same "implied contract" referenced in the Wisconsin Constitution. A far more reasonable interpretation, particularly in light of the equally axiomatic principles that an individual may be arrested for violating a municipal ordinance and imprisoned for failure to pay a municipal forfeiture, is that the Wisconsin Constitution was not referencing the esoteric concept of a social contract, but rather a commercial contract.

In *State ex rel. Pedersen v. Blessinger*, 56 Wis. 2d 286, 201 N.W.2d 778 (1972), the Wisconsin Supreme Court considered the constitutionality of Wis. Stat. § 973.07, which allowed commitment to the county jail upon nonpayment of fines for a criminal violation. The court upheld the statute on equal protection grounds, provided the person convicted and fined was given an indigency hearing prior to incarceration. Wis. Stat. § 800.095(4), in turn, provided for such an indigency hearing in *municipal court* prior to commitment to the jail for nonpayment of the *civil forfeiture*.

Former Wis. Stat. § 66.12(1)(c) read very similar to § 800.095(4)(b) in that a defendant convicted of a municipal ordinance violation could be imprisoned for up to 90 days for nonpayment of a forfeiture. In *City of West Allis v. State ex rel. Tochalauski*, 67 Wis. 2d 26, 30, 226 N.W.2d 424, 427 (1975), the Wisconsin Supreme Court observed:

> In the present case the defendant does not assert that sec. 66.12(1)(c), Stats., is unconstitutional. Indeed, it is recognized by the defendant that the statute vests in the municipal court the discretion to order confinement and withholds any power to order imprisonment in lieu of the forfeiture as distinguished from the power to order imprisonment as a means of collection. See: *State ex rel. Keefe v. Schmiege* (1947), 251 Wis. 79, 29 N.W.2d 345 (The legislature cannot grant municipalities power to impose imprisonment for violation of ordinances other than as a means of enforcing forfeitures assessed.)

Haas' incarceration was not ordered as a penalty *per se*, but because he refused to pay the forfeiture. In light of *City of West Allis*, it was reasonable for Judge Michelson (and all other municipal judges in this state) to assume that the commitment procedure in § 800.095 was reasonable and constitutional. It was also reasonable for the City and County law enforcement to rely on the validity of the commitment orders issued pursuant to § 800.095.

Haas extends his incredible chain of liability to the Racine police officers who arrested Haas upon Michelson's commitment, in essence stating that, if Michelson was not aware of Haas' theories of liability, then surely the City Officers should have been aware. And, if they were not aware, then surely the Racine county sheriff's deputies who accepted Haas for incarceration pursuant to the committment should have been aware. Throughout this exercise, Haas overlooks quasi-judicial immunity and qualified immunity for the officers.

B. Haas Cannot Show A Violation Of The Thirteenth Amendment Or 42 U.S.C. § 1994

The Thirteenth Amendment has been interpreted in the municipal ordinance context as follows:

> As a matter of history, it is well known that the amendment was adopted with the object of prohibiting slavery in the states, and not to prohibit such forms of service as had always been treated as lawful and proper elsewhere. . . . The word 'crime' was used in its most comprehensive sense, as prohibiting such involuntary servitude as is not inflicted as a punishment for an offense against the law; . . .

City of Chicago v. Coleman, 254 Ill. 338, 341-342, 98 N.E. 521, 523 (1912) (citation omitted).

Haas was "jailed only because of his own obstinance." (Pet. App. B, 40a) Haas was not incarcerated due to any indebtedness such that he was in a state of "peonage." As the Washington Supreme Court observed in *In re Johnson*, 71 Wash. 2d 245, 253, 427 P.2d 968, 973 (1967):

> [t]he legislative purpose of the Anti-Peonage Act was to implement the Thirteenth Amendment by striking down all laws and usages in the states and territories which attempted to maintain and enforce involuntary service of any person as a peon, in liquidation of any debt.

The district court and Seventh Circuit carefully distinguished Haas' involuntary servitude and peonage cases. Haas' repeated "hard labor" rhetoric is a convenient red herring. Even Haas does not contend that his short stay in police custody resulted in his forced performance of actual physical labor, arduous or otherwise. Prior

decisions involving mentally retarded men forced to work and live in squalor without pay or men captured and forced to work "are a far cry from the facts of the case before [the District Court]." (Pet. App. B, 39a.)

Haas maintains that these other cases are indistinguishable from his situation because money used to pay a debt represents a certain quantum of his labor. This argument is apparently so obvious that he supplies no authority to support it. If the payment of money is legally equivalent to imprisonment at hard labor, then the payment of money is a remedy available only as a criminal sanction. To accept Haas' logic would mean the end of the civil justice system.

IV. The Rooker-Feldman Doctrine Deprived The Federal Court Of Jurisdiction.

A. The Presence Of Subject Matter Jurisdiction Eliminates The Duty Of A Federal Court To Collaterally Review The Actions Of The Municipal Court

Haas' arguments are based on the assumption that the municipal court does not have subject matter jurisdiction. That assumption is completely erroneous. The decisions cited by Haas in support of collateral review are simply inapplicable, as there is no basis to conclude that subject matter jurisdiction was lacking in the municipal court.

Haas states:

> Thus, challenging the enforcement action of the state – or any other action by a judge *that does not implicate the policies behind judicial immunity* – is not barred by Rooker-Feldman.

Petition, page 5 (emphasis added.) Even within the context of *Rooker-Feldman*, Haas is unable to acknowledge the municipal court has subject matter jurisdiction over municipal actions.

The discussion of federal power in *Kalb v. Feuerstein*, 308 U.S. 433, 60 S.Ct. 343 (1940), illustrates the absence of support for Haas' position.

> It is generally true that a judgment by a court of competent jurisdiction bears a presumption of regularity and is not thereafter subject to collateral attack. But Congress, because its power over the subject of bankruptcy is plenary, may by specific bankruptcy legislation create an exception to that principle and render judicial acts taken with respect to the person or property of a debtor whom the bankruptcy law protects nullities and vulnerable collaterally.

Id. at 346.

As with his arguments regarding the absence of judicial immunity, Haas' complaints involve personal jurisdiction, not subject matter jurisdiction. He denies that judgment was properly entered because he contends he did not have to appear before the Municipal Court, thereby alleging a lack of personal jurisdiction. That he admits his guilt before this Court is of no consequence. Judgment was entered based on failure to appear, not a plea of guilty. Federal courts do not have original jurisdiction over municipal court proceedings.

It is disingenuous rhetoric to suggest the Seventh Circuit's decision has immunized state actors who violate the civil rights of citizens. It is Haas that seeks to have this court shield him from the payment of civil forfeitures

and codify his world view as determinative of municipal court jurisdiction.

B. Haas' Claims Are Inextricably Intertwined With The Municipal Court and State Court Judgments

As discussed in *Wollin, supra*, challenges to a conviction or a sentence are not cognizable under § 1983. *Heck v. Humphrey*, 512 U.S. 477, 114 S.Ct. 2364 (1994). In *Heck*, the Supreme Court determined that because § 1983 creates a "species of tort liability" it was not possible to attack the lawfulness of a conviction through § 1983, as a tort action was not a proper vehicle for challenging a conviction.

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under § 1983. *Thus, when a state prisoner seeks damages in a § 1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can*

> *demonstrate that the conviction or sentence has already been invalidated.*

Id. at 2372-73 (emphasis added).

On April 30, 2002, the Wisconsin Supreme Court ended the plaintiff's habeas corpus challenge to his convictions and sentences. *State of Wisconsin ex rel. Gerald Haas v. William McReynolds*, 2002 WI 43, 252 Wis. 2d 133, 643 N.W.2d 771. Having failed to reverse his convictions and sentences, Haas is unable to prove that his convictions or sentences have been reversed. The relief sought here "would necessarily imply the invalidity of his conviction[s] or sentence[s]" and thus cannot be granted.

The *Younger* doctrine commands that federal courts should refrain from enjoining state criminal prosecutions. *Younger v. Harris,* 401 U.S. 37, 91 S.Ct. 746 (1971). This doctrine is not limited to criminal convictions.

> The doctrine has been extended to apply to quasi-criminal proceedings of the sort involved here [involving municipal ordinances] and to civil proceedings which implicate certain important state interests. *Ohio Civil Rights Commission v. Dayton Christian Schools, Inc.*, 477 U.S. 619, 106 S.Ct. 2718, 2722-23, 91 L.Ed.2d 512 (1986); *Middlesex County Ethics Committee v. Garden State Bar Ass'n,* 457 U.S. 423, 432, 102 S.Ct. 2515, 2521, 73 L.Ed.2d 116 (1982); *Brunken,* 807 F.2d at 1330.

Jacobsen v. Village of Northbrook, 824 F.2d 567, 569 (7th Cir. 1987).

The District Court and the Seventh Circuit applied the related doctrine known as *Rooker-Feldman*

> In *Rooker,* the Supreme Court acknowledged that the plaintiff claimed to be injured by the state court's treatment of her case, not simply by the defendant: "The grounds advanced for resorting to the [federal] District Court are that the [state] *judgment* was rendered and affirmed in contravention of the contract clause of the Constitution of the United States . . . and the due process of law and equal protection clauses of the Fourteenth Amendment. . . ." 263 U.S. at 414-15, 44 S.Ct. at 150 (emphasis added). The *Rooker* Court held, however, that no matter how wrongful a state court decision may have been, a federal district court had no jurisdiction to reverse or modify it. *Id.* at 415-16, 44 S.Ct. at 150. The *Feldman* Court similarly held that federal district courts "do not have jurisdiction . . . over challenges to state-court decisions in particular cases arising out of judicial proceedings even if those challenges allege that the *state court's action* was unconstitutional." 460 U.S. at 486, 103 S.Ct. at 1317 (emphasis added). Thus *Rooker* and *Feldman* both proclaimed that if a federal plaintiff claims injury at the hands of a state court, due to its decision in a civil case, federal district courts have no jurisdiction to hear the case; and the only appeal is to the Supreme Court after a final judgment by the highest state court.

Gary v. Geils, 82 F.3d 1362, 1366 (7th Cir. 1996). Although often phrased in terms of the "judgment" of the state court, *Rooker-Feldman* is not limited to the single action of entering judgment. Rather, the doctrine applies to any actions taken within a judicial capacity in a civil case.

> In *Leaf,* 979 F.2d at 596, we noted the significance of this language from *Feldman.* We elaborated that if the injury alleged by the federal plaintiff was due to the "nonjudicial" actions of a state court, i.e., if the injury did not "arise out of judicial proceedings," lower federal courts could have jurisdiction: "A district court . . . may have jurisdiction when the litigant's challenge is not directed at a state court's judicial proceedings but rather involves a state court's administrative, legislative, or ministerial actions." *Id.*

Gary, 82 F.3d at 1366, FN 6.

As correctly noted by both the District Court and the Seventh Circuit, Haas' claims are on all fours with *Homola v. McNamara*, 59 F.3d 647 (7th Cir. 1995). Haas does not mention *Homola* in his petition, nor did he mention the case before the Seventh Circuit, an omission that was noted by the Appellate Court. (Pet. App. A, 9a.) As with his decision to avoid discussion of the municipal court's statutory authority, Haas' *Rooker-Feldman* arguments are symptomatic of blind advocacy and demonstrate the lack of merit in his claims.

Haas attempts to compartmentalize the actions of the Municipal Court into three self-serving categories: The initial decisions regarding citation procedure, the judgment that he violated the municipal ordinance (which Haas does not contest), and the issuance of the commitments. Haas believes these events are sufficiently connected such that the initial jurisdictional defects taints the entire process, thus giving rise to his constitutional claims, but does not believe this connection is sufficient to preclude relief under *Rooker-Feldman.*

> The *Rooker-Feldman* doctrine would not bar federal review if, during the state court proceedings, plaintiff had no reasonable opportunity to raise the claims that he now raises. *Brokaw v. Weaver,* 305 F.3d 660, 668 (7th Cir.2002). However, plaintiff could have raised the claims he raises here in municipal court, *see* Wis. Stat. §§ 800.02(1), 800.04, 800.095, 800.115(2), or he could have appealed the municipal court judgments, *id.* § 800.14. Indeed, in at least one instance plaintiff did, in fact, raise some of his present claims in state court. *State of Wis. ex rel. Haas v. McReynolds,* 252 Wis. 2d 133, 136-39, 142-44, 643 N.W.2d 771 (2002) (recounting history of prior proceedings and declining to reach the merits of plaintiff's claims).

(Pet. App. B, 20a-21a.)

The irony of Haas' claims should not be lost on this court. He contends he was denied due process as a result of his own conscious decision not to participate in the process.

> Orders issued without an opportunity for litigation are understood as open to limited collateral attack. The order to hale Homola into court in the contempt proceedings, by contrast, was issued after an opportunity to be heard. *Homola spurned that opportunity – that is why he had to be dragged into court – but one who turns his back on the original tribunal does not help himself to the opportunity to litigate elsewhere.*

Homola, 59 F.3d at 651 (emphasis added).

In *Nesses v. Shepard*, 68 F.3d 1003 (7th Cir. 1995), the Seventh Circuit noted that the *Rooker-Feldman* doctrine

"ought to be confined to cases in which the defendant in the state court is seeking to undo a remedial order of some sort (ordinarily a criminal conviction or an injunction). *Id.* at 1004. This statement eviscerates Haas' attempts to parcel out the issuance of commitments, which is properly categorized as a remedial action and thus precisely the type of *action* to which *Rooker-Feldman* applies. Sanctions imposed under § 800.095 are remedial.

CONCLUSION

The Petitioner's claims are based on a distortion of state and federal law. The constitutional prohibitions against peonage and involuntary servitude are not implicated by the issuance and enforcement of a default judgment in municipal court for the failure to appear. The Seventh Circuit's decision did not create additional governmental authority or sanction improper practices. The petition seeks a radical restructuring of governmental authority in line with the Petitioner's view of the role of government. Based on the above argument and authorities, it is respectfully requested that this Court deny the petition.

Respectfully submitted on the 9th day of December, 2004.

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